

# Party Discipline & the King Doctrine

*Canada's ironclad controls are beginning to rust out*

— writes James W. J. Bowden

The first two months of 2022 saw great political turmoil in Canada as the pandemic entered the beginning of its end and two years of frustration and rage boiled over. A convoy of truckers and their supporters protesting vaccine mandates and pandemic restrictions descended upon Ottawa and blocked off streets in the downtown core for three weeks. This blockade only ended after the Trudeau ministry invoked the *Emergencies Act* for the first time since Parliament had enacted it in 1988, and police cleared out all the trucks and protesters. While the Convoy failed to achieve its primary objective of inducing Ottawa to abolish vaccination requirements for some international travel, it managed to precipitate some other interesting and consequential political changes, first within the Conservative Party but to a lesser extent within the Liberal Party as well. Before the Convoy left town, Erin O'Toole found himself ousted as leader of the Conservative Party, and two Liberal backbenchers would emerge as genuinely independent critics of the prime minister whilst remaining within the Liberal parliamentary party.

## An Ersatz President

ULTIMATELY, CANADA'S IRON party discipline stems from American innovations that Canadian political parties imported in the 1910s and 1920s. In Canada, we have over the last century cultivated an *ersatz presidentialism* and created semi-invincible and sessile prime ministers who need only resign the party leadership after losing an election, but not because the parliamentary party or cabinet ousts them from office. Until a century ago, the parliamentary party alone elected

and ousted party leaders. Australian political parties still follow this tradition today, but Canada rejected this tradition after the First World War.

After the Conscription Crisis of 1917, most English-speaking Liberal MPs had abandoned Sir Wilfrid Laurier and joined Sir Robert Borden's Conservatives in a temporary wartime coalition. Sir Robert restructured his ministry and invited 9 Liberals and 1 Labourite to join a new Unionist administration,<sup>1</sup> and these Liberals even ran with the Conservatives in the election of 1917 as a coalition, which lasted until July 1920.<sup>2</sup> The venerable Sir Wilfrid led the Liberal Party for an astonishing 32 years, from 1887, through his premiership from 1896 to 1911, and until his death in 1919.

LAURIER HAD ORIGINALLY scheduled a policy conference for 1919 that would chart the party's course after the Great War; after his death, the Liberals decided to stage a delegated leadership convention instead. The Liberal parliamentary party selected David D. McKenzie expressly as an interim leader and abdicated its own authority to elect future party leaders.<sup>3</sup> McKenzie ran for the leadership at the convention but lost to William Lyon Mackenzie King, a former MP and Minister of Labour under Laurier who remained loyal to Laurier's legacy.<sup>4</sup> Canadian historian John Lederle remarked: "It is interesting to note that the temporary leader selected by the parliamentary caucus, himself a candidate for the leadership at the convention, did not automatically get the leadership mantle."<sup>5</sup> The Conservative Party adopted the same style of delegated convention to elect R.B. Bennett as leader

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in 1927.<sup>6</sup> The New Democratic Party also elected its leaders by delegated conventions from 1961 until 2003, when it gave that power to the members of the party themselves. The Reform Party and its successor, the Canadian Alliance, also gave each party member one vote.

Mackenzie King led the Liberals to tentative victory in 1921 in the first minority parliament since Confederation, to near-defeat in 1925 in another minority parliament in which Arthur Meighen's Conservatives won the plurality of seats, and, finally, to a majority in 1926 after the King-Byng Affair. King lost to R.B. Bennett in 1930 but won another majority and began his third non-consecutive term in 1935, winning more majorities in 1940 and 1945 before retiring in 1948.<sup>7</sup> Such a lengthy tenure as party leader, both in government and opposition, would not happen today and indeed has not happened since King's time.

King told his cabinets and the Liberal parliamentary party at some points between 1919 and 1948 that since a delegated convention had elected him as party leader, only a delegated convention could remove him as party leader and abolished the parliamentary party's authority to elect and oust leaders altogether.<sup>8</sup> King considered himself "the representative of the party as a whole, not merely of the parliamentary group" and further believed: "What the parliamentary group did not create it may not destroy, at least not without ratification by the party 'grass roots.' The leader may appeal beyond the caucus to the party membership."<sup>9</sup> John Lederle first reported on King's Doctrine in 1947; former Liberal cabinet minister J.W. Pickersgill corroborated Lederle's account of The King Doctrine in an interview with political scientist John Courtney in 1969.<sup>10</sup> The theory that party leaders elected through delegated conventions could likewise only be ousted through delegated conventions quickly took hold and became the conventional wisdom of Canadian politics in the 20th century. But this contrivance contradicts all parliamentary tradition and common sense.

One precedent from the late 19th century illustrates how cabinet and the parliamentary party could oust leaders, and another federal

precedent from the early 21st century shows that the parliamentary party still holds great sway in practice. In Jan. 1896, the Conservative cabinet staged a revolt against Senator Prime Minister Sir Mackenzie Bowell, made Sir Charles Tupper the Leader of the Government in the House of Commons and *de facto* Prime Minister, and forced Bowell to resign the premiership formally in Apr. 1896.<sup>11</sup> As Barry Wilson has written in *THE DORCHESTER REVIEW*,

Bowell became the first sitting prime minister and party leader in British parliamentary history to be forced from office by his own caucus despite the fact that he led a majority government. Another century would pass before Canadians again witnessed the spectacle of a prime minister and party leader who commanded a majority in Parliament (Jean Chrétien) being pushed into resignation by dissenters fighting an in-party civil war for power.<sup>12</sup>

If a party leader cannot maintain the support of the parliamentary party, then he realistically cannot remain as leader, irrespective of what the broader membership of the political party has expressed.

### **Chrétien & King's Doctrine**

NO RECENT FORMER PRIME minister has articulated the King Doctrine as clearly and unambiguously as Jean Chrétien. On Aug. 22, 2002, after months of bitter in-fighting within the Liberal Party, Chrétien finally announced that he would resign as leader of the Liberal Party and Prime Minister in Feb. 2004.<sup>13</sup> But events compelled him to resign instead in Dec. 2003. Chrétien made this announcement while the House of Commons stood adjourned for summer recess at the Liberal parliamentary party's annual retreat and not in the House of Commons itself or outside of the prime minister's offices at what was then called Langevin Block. Liberal MPs never openly called upon Chrétien in the House of Commons itself to resign the premiership, and the Liberal parliamentary party accepted what the press dubbed Chrétien's "Long Goodbye" of over one year. If any Liberal MPs had publicly denounced him, Chrétien would

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simply have kicked them out of the parliamentary party and refused to sign off on their nomination papers as Liberal candidates in the next general election.

In his autobiography, Chrétien endorses the King Doctrine wholeheartedly as he analyses the dissent which began to erupt within the Liberal Party in Mar. 2000:

If there was a conspiracy afoot, I figured it would backfire badly. There was no mechanism to oust me until after another election; there had been no resignations from Cabinet or uprisings in the party, except when John Nunziata voted against the 1996 budget and was expelled from caucus; and [Finance Minister] Martin wasn't strong enough to orchestrate a coup.<sup>14</sup>

By “no mechanism,” Chrétien meant that only a leadership review at the biennial party conference could force him to resign. He also argued the Liberal parliamentary party could only have ousted him by voting against a key government bill or on a motion of confidence in the House of Commons itself, and not internally as a parliamentary party. But even then, Chrétien makes clear that if the Liberal parliamentary party had rebelled, he would have responded by advising the Governor General to dissolve a majority parliament in which no other party could form government; he would continue leading the Liberal Party in the snap election, probably win, and cement his hold on power.

In the parliamentary system, a prime minister remains prime minister until he is defeated in the House. [...] As a result, whenever Martin's supporters in the Cabinet and the caucus vehemently opposed any of my major decisions, I simply had to hint that I was ready to lose the vote in the House of Commons to make them ei-

ther rally to my side or absent themselves with a strategic trip out of town. If the government had fallen on a serious matter, they knew, I would have called a quick election and been almost certain to win another five-year mandate.<sup>15</sup>

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Chrétien recounts that he had originally planned on retiring around late 2000 or early 2001, in other words toward the close of the 36th Parliament elected in 1997, but that he and his wife decided on Mar. 28, 2000 during the Liberal Party's biennial convention in Ottawa that he would stay on to lead the party through one more election.<sup>16</sup> On Sep. 25, 2000, Stockwell Day, the new Leader of the Opposition and of the Canadian Alliance, gave Chrétien the opportunity to make good on

his pledge. He taunted Chrétien in the House of Commons and dared him to call an early election. “I almost crossed the floor to kiss him,” Chrétien wrote. “He could hardly blame me for calling one after three and a half years when he himself had demanded it.”<sup>17</sup>

AFTER LEADING THE Liberals to a big majority in Nov. 2000, Chrétien claims that he had then planned on announcing his retirement in Nov. 2002 for a Liberal leadership convention in the fall of 2003, but Paul Martin's faction within the Liberal Party “started to infect the harmony of the caucus, the solidarity of the Cabinet, and eventually the operation of the government.”<sup>18</sup> In late May 2002, Martin mused with reporters, “Will my continuation in the Cabinet, given these events, permit me in fact to exercise the kind of responsibility and influence that I believe a minister of finance ought to have?”<sup>19</sup> Chrétien called Martin's bluff and telephoned him to say that he “had accepted his resignation,” but Martin later claimed that Chrétien fired him.

## The Provinces

THIS KING DOCTRINE exists to varying extents in the provinces as well but seems weakest in Alberta, where a succession of four one-party systems between 1905 and 2015 made most general elections irrelevant and transferred the true competition to the leadership election of the governing party. The parliamentary wing of Progressive Conservative Party of Alberta forced Ralph Klein to retire in Dec. 2006 instead of allowing him to draw out his own Chrétien-style “Long Goodbye” to 2008.<sup>20</sup>

Klein made the mistake of announcing two weeks before a leadership review that he would retire in 2007 or 2008.<sup>21</sup> Having mortally wounded himself, he then won the approval of only 55% of party delegates and pledged to resign as soon as the party elected a new leader in late 2006.<sup>22</sup> The PC parliamentary party also immediately ousted Alison Redford as leader and Premier in March 2014 with near-immediate effect,<sup>23</sup> and replaced her with “interim leader” and, according to *CBC News*, “interim Premier,” Dave Hancock.<sup>24</sup> The party then held a leadership convention later that year and elected Jim Prentice, who was Premier from Sep. 2014 to May 2015.

Throughout 2022, both the membership and the caucus of the United Conservative Party besieged Jason Kenney and called his leadership into question. Brian Jean, who had run against Kenney for the leadership but lost in 2018, re-entered politics in dramatic fashion in Mar. 2022, winning a by-election in Fort McMurray with 63.9% of the popular vote after publicly denouncing Kenney.<sup>25</sup> A few days later on Mar. 23, the UCP generated more controversy by cancelling its in-person leadership review at a convention on Apr. 9 and switching the vote on Kenney’s leadership to a mail-in ballot in

stead, the results of which would not be announced until May.<sup>26</sup> Finally, on May 18, Kenney won the support of only 51.4% of party members, and announced that he would resign as party leader and Premier after the UCP had chosen his successor.<sup>27</sup> Party members elected Danielle Smith as leader, and the Lieutenant Governor appointed her as Alberta’s Premier on Oct. 11, 2022.<sup>28</sup>

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In other provinces, Premiers have remained impervious to cabinet revolts and the parliamentary party. For example, Greg Selinger, Premier of Manitoba and Leader of the New Democratic Party, somehow managed to limp on for another 18 months after *five* ministers — the Ministers of Finance, Justice, Health, Municipal Government, and Jobs and the Economy — resigned *en*

*masse* on Nov. 3, 2014.<sup>29</sup> The Selinger ministry survived because these five former ministers “insisted that they will remain staunch NDP MLAs and vote with the government on issues in the legislature.” Jennifer Howard, the outgoing Minister of Finance and thus most important cabinet minister after the Premier, explained: “We’re all New Democrats. That’s how we’re going to vote in the house.” Canadian politicians have so deeply internalized ironclad party discipline that even cabinet ministers who resign from cabinet in protest at the Premier still pledge to continue supporting the same Premier in the legislative assembly.<sup>30</sup> Naturally, Selinger remained defiant and insisted that he would not resign.<sup>31</sup> Selinger only resigned as party leader after Brian Pallister led the Conservatives won a majority in the next general election in Apr. 2016. Only electoral defeat, and not dissent from within the parliamentary party or ministerial resignations, can force a party leader to resign under the King Doctrine.

## Among Conservatives

CANADIAN POLITICAL PARTIES in opposition have forced their leaders to resign, either immediately or a few months later after holding a leadership convention. In 1983, Joe Clark convened a leadership convention after winning the support of only two-thirds of the federal Progressive Conservative Party in a scheduled leadership review. The parliamentary party did not force him to resign in this case, but he had to resign after losing the support of the party delegates to Brian Mulroney.<sup>32</sup> In contrast, the Liberals forced Stephane Dion to resign as party leader in Dec. 2008 immediately after the proposed Liberal-New Democratic coalition fell apart and then swiftly acclaimed Michael Ignatieff as their new leader.<sup>33</sup> The Conservative Party of Canada pressured Andrew Scheer to resign shortly after the election of 2019, even though the Conservatives had won the plurality of the popular vote and reduced the Liberals to a plurality. The Conservative parliamentary party voted to oust Erin O'Toole as leader on Feb. 2, 2022 under the *Reform Act*, after the election of 2021 produced virtually the same result as that of 2019.

But perhaps the most dramatic and drawn out example came in the aftermath of the snap election in 2000, which Stockwell Day, leader of the Canadian Alliance and Official Opposition, had dared Prime Minister Chrétien to call and then lost badly. Chrétien led his Liberals to a large parliamentary majority on par with what they secured in 1993. Naturally, these events caused some Canadian Alliance MPs to question Day's judgment.

The aftermath of the 2000 election also set the familiar pattern which the Conservative Party, the successor to the Canadian Reform Conservative Alliance, has inherited: new leaders boast that they can form a government after their first general election, fail to achieve that goal, and then get ousted. By early May 2001, several Alliance MPs had begun to question Day's leadership over the party's poor performance in the general election the previous autumn.

In the grand Canadian tradition of zero tolerance for dissent, Day ousted Art Hanger

from the parliamentary party for having questioned his judgment.<sup>34</sup> Party stalwarts Deborah Grey and Chuck Strahl then rebelled.<sup>35</sup> By July, 11 MPs had left the Canadian Alliance and formed a breakaway Democratic Representative Caucus (DRC, or to Day's staff, the "dorcs").<sup>36</sup> On 9 July, Stockwell Day made an absurd offer to take leave of absence as leader until the party's scheduled convention and leadership review in 2002, which the dissident MPs rejected.<sup>37</sup> Day then espoused the King Doctrine in full, arguing that the parliamentary party could not oust him as leader: "The grassroots elected me. The grassroots and the [party] constitution will determine my future."<sup>38</sup> Day articulated the King Doctrine even more clearly in an interview with historian Bob Plamondon:

The split-away group wanted me to step down, which was not a democratic response. When you are committed to democratic values you can't allow yourself to be overrun by what appears to be a lack of respect for democracy. [...] Had I stepped down, caucus would have disintegrated. The majority in caucus did not want me to step down. [...] Let's have a leadership race and that will carry us forward. It will settle things down and we will avoid tearing the party apart.<sup>39</sup>

Day here argues that allowing the parliamentary party alone (or a segment of it) to elect and oust leaders is fundamentally anti-democratic. He believed that "it was up to the party members, not caucus, to choose the party leader."

In August 2001, the DRC (almost all of whom had been Reform Party MPs under Preston Manning's leadership) then entered into negotiations with Joe Clark's PC Party and 8 DRC MPs announced on Sep. 10, 2001 that they would enter into a coalition with the PCs in opposition, which gave this new formation 20 MPs in total.<sup>40</sup> This story suffered the misfortune of appearing in the morning papers on Sep. 11 and, owing to the terrorist attacks in New York and Washington, escaped notice until the House of Commons resumed on Sep. 24, when Speaker Milliken acknowledged the "PC/DR Coalition" as



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a grouping but withheld “full party recognition” because it “is clearly an amalgam of a party [the Progressive Conservative Party] and a group of independent MPs.”<sup>41</sup>

In other words, for practical purposes, the Speaker recognised the PC/DR Coalition as the Progressive Conservative Party in a new guise, and kept all the party rankings and committee memberships intact. Day agreed to resign as leader in Jan. 2002 so that the party could hold a new leadership election, in which Day still ran, along with Diane Ablonczy, Grant Hill, and Stephen Harper.<sup>42</sup> The PC/DR Coalition fell apart in Apr. 2002 when Stephen Harper won the leadership of the Canadian Alliance.<sup>43</sup> Stockwell Day’s refusal to recognise the authority of the parliamentary party forced the Canadian Alliance to spend the better part of 18 months without an effective leader during which it failed to hold the Chrétien ministry to account in the House of Commons.

The power of the near-invincible party leader not only insulates him from being ousted but allows him, in turn, to oust other MPs from the parliamentary party as punishment for personal misconduct, legitimate disagreements over policies, or for questioning the leader. In Nov. 2004, Paul Martin kicked Carolyn Parrish out of the Liberal parliamentary party in a minority parliament after she had called Americans “bastards,” ritualistically stomped on a doll of President George Bush, mocked the countries which joined the War in Iraq as a “coalition of idiots,” and dismissed Martin himself as “weak”<sup>44</sup> — a stirring performance all round.

Stephen Harper kicked Garth Turner out of the Conservative parliamentary party in the next minority parliament in Oct. 2006 for having divulged confidential caucus discussions on his blog, despite heading a tenuous single-party minority government at the time.<sup>45</sup> But Turner himself said that Harper kicked him out more for his outspoken views and criticism of the Harper ministry and not because he had divulged confidential internal discussions.<sup>46</sup> Turner sat as an Independent for a few months before joining the Liberals in Feb. 2007.<sup>47</sup> Erin O’Toole exacted the same punishment on Saskatch-

ewan Senator Denise Batters in late 2021 after she questioned his leadership.

### The Reform Act

IN APRIL 2014, CONSERVATIVE MP Michael Chong tabled the legislation which became the *Reform Act* in June 2015.<sup>48</sup> Originally, the bill would have added five procedures to the *Parliament of Canada Act*, which would have applied automatically to all parliamentary parties as a matter of course, like any normal statutory provision. These procedures outline how recognized parties in the Commons can conduct leadership reviews, oust their leaders and appoint an interim leader, remove members from the parliamentary party, and re-admit said members to the parliamentary party under some conditions. But Chong had to accept a Pyrrhic Victory to secure the bill’s passage. The *Reform Act* as enacted in 2015 made all these procedures contingent instead of automatic and universal: every parliamentary party has to decide when it first meets after each general election whether to subject itself to each of the procedures, separately, and their decisions apply only for the life of that particular parliament.

In other words, in any given parliament, only some of these procedures might apply to some political parties, but they would not apply automatically and universally. And if adopted, these procedures only apply for a variable amount of time, because some parliaments last longer than others. Furthermore, this optional hodgepodge has become difficult if not impossible to enforce legally; despite being codified in a statute, these provisions have become merely politically enforceable, as if they were constitutional conventions.

The *Parliament of Canada Act* now says that each parliamentary party must (but under no pain of true enforcement) vote in its first meeting after each general election on whether to apply each of these five procedures to itself for the duration of each parliament:

*Section 49.2:* a member of the House of Commons can be expelled from the parliamentary party only if at least 20% of the members of the parliamentary party ask that

the caucus chair hold a vote to review the other member's status, and if a simple majority of the parliamentary party votes by secret ballot to expel that member;

*Section 49.3:* a member of the House of Commons so expelled under that procedure can become a member of that parliamentary party again only by being re-elected as a candidate of that party, or if at least 20% of the members of the parliamentary party ask that the caucus chair hold a vote to review the other member's status, and if a majority of the parliamentary party then votes by secret ballot to re-admit that member;

*Section 49.4:* The parliamentary party by secret ballot elects from amongst its members a caucus chair, who can only be removed if at least 20% of the parliamentary party deliver written notice to that effect, and if a majority by secret ballot then vote to oust said caucus chair;

*Section 49.5:* The parliamentary party can initiate a "leadership review" by secret ballot "to endorse or replace the leader of a party" if at least 20% of its members sign a written notice to that effect. If a majority of the parliamentary party then votes to oust their leader, the caucus chair then presides over a second vote to elect an "interim leader" who serves until the party holds its formal leadership election amongst its broader membership;

*Section 49.6:* The parliamentary party shall elect an "interim leader" as soon as possible under the procedure outlined in section 49.5 if the leader dies in office, becomes incapacitated, or resigns.

The procedures in 49.2 and 49.3 are counted in the same vote, which is why a parliamentary party votes on whether to adopt four procedures. So far, these procedures could have applied to the three parliaments elected in 2015, 2019, and 2021. But the de-

tails become hazy. Only the Conservative parliamentary party has ever voted to apply any of the procedures to itself; the other parties seem reluctant to take these provisions seriously at all and seem to regard this legislation as an attempt to change the Conservative Party's internal procedures through a higher authority. The history of the Canadian Alli-

ance and Conservative Party from 2000 to 2015 lends some credence to that viewpoint; however, Michael Chong supports ambitious reforms for the House of Commons as a whole based on the power and independence of British MPs.<sup>49</sup>

The Liberal parliamentary party declined in the 42nd, 43rd, and 44th Parliaments to apply the provisions of the *Reform Act* to itself, which gave Trudeau the latitude to exact internal punishments unilaterally, or to pres-

sure Liberal MPs to resign from caucus. For example, Trudeau unilaterally ousted both Jody Wilson-Raybould and Jane Philpott from the parliamentary party in 2019, even though they had resigned from cabinet before criticising him publicly.<sup>50</sup> Philpott raised a point of privilege and argued that Trudeau had violated the terms of the *Reform Act* by ousting her from the parliamentary party unilaterally, but Speaker Geoff Reagan ruled against her, if only because he found that the Speaker could not adjudicate on matters that take place in caucus.<sup>51</sup>

The best view is probably that the Liberal parliamentary party failed to abide by the terms of the *Reform Act* after the election of 2015 when Liberal MPs did not hold a recorded vote in their first caucus meeting on whether to apply the terms of the legislation to themselves for the duration of the 42nd Parliament.<sup>52</sup> Neither did the New Democrats. And since the Liberals did not even

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vote on whether to apply the *Reform Act* to themselves when elected in 2015, Trudeau remained free to oust MPs unilaterally. In 2019, the Liberal parliamentary party seems to have held the proper vote but declined to apply the *Reform Act* to itself for the 43rd Parliament.<sup>53</sup> The Conservative parliamentary party ousted Derek Sloan from caucus under the *Reform Act* on Jan. 20, 2021.

In the parliament elected in Sep. 2021, only the Conservative parliamentary party decided to subject itself to all four elements of the *Reform Act*.<sup>54</sup> The New Democrats and Blocists decided not to adopt any of the terms, and the Liberals likewise unanimously rejected them all.<sup>55</sup> Overall, the *Reform Act* has become in some ways unenforceable outside each parliamentary party, since no one can truly compel a parliamentary caucus to hold the vote on whether or not to apply these procedures to itself.

The Parliament of Canada has through this legislation presumed to “grant” members of parliament and a parliamentary party an authority to select and oust their party leaders which they already possessed all along by necessity and by ancient parliamentary right. And yet, in practice, parliamentary parties probably needed this statute to reassert their old authority which nearly a century of electing party leaders by delegated conventions or directly by the party membership had obscured and corrupted. Parties cannot easily rely on the authority of a tradition which has virtually died out.

### **Party Discipline**

JUSTIN TRUDEAU’S SNAP election in Sep. 2021 produced almost the same result as the scheduled fixed-date election of 2019 and the least change in party standings between two consecutive elections since 1963 and 1965, when Lester B. Pearson tried (and failed) to turn his minority into a majority. In 2019, the Liberals returned 157 MPs opposite 121 Conservatives, 32 Blocists, 24 New Democrats, and 3 Greens; in 2021, the Liberals elected 159 MPs versus 119 Conservatives, 32 Blocists, 25 New Democrats, and 2 Greens. And in both 2019 and 2021, the Conservatives won

the plurality of the popular vote while the Liberals won the plurality of seats. Conservative leader Erin O’Toole faced some criticism and calls to resign immediately after the election,<sup>56</sup> and the Conservative parliamentary party in Oct. 2021 voted to adopt all four elements of the *Reform Act* for the duration of the 44th Parliament.<sup>57</sup> This became crucial a few months later.

In Nov. 2021, Senator Denise Batters, disappointed by the Conservatives’ failure to break the deadlock in the snap election, launched a petition to oust O’Toole as leader,<sup>58</sup> and O’Toole promptly ousted Batters in kind, kicking her out of the parliamentary party. (The *Reform Act* applies only to members of the House of Commons). O’Toole balked at the very notion that any Conservative member of the House or Senate would criticise his leadership and portrayed Batters’s petition as an attack on the entire parliamentary party: “As the leader of the Conservative Party of Canada,” he said, “I will not tolerate an individual discrediting and showing a clear lack of respect towards the efforts of the entire Conservative caucus, who are holding the corrupt and disastrous Trudeau government to account.”<sup>59</sup> However, O’Toole had to backtrack two months later under increasing pressure from the parliamentary party and disagreements over pandemic policies. He announced on Jan. 24, 2022 that he “doesn’t really mind” that Conservative members of parliament representing Saskatchewan had kept Senator Denise Batters in their informal provincial caucus.<sup>60</sup>

On Feb. 1, Scott Reid, chairman of the Conservative parliamentary party, announced that he had received written notice from at least 20% of Conservative MPs, which triggered a leadership review under the *Reform Act*.<sup>61</sup> Wasting no time, Conservative MPs voted by secret ballot on Feb. 2 to oust O’Toole by a huge margin of 73 to 45 (61.6%); O’Toole immediately resigned and the parliamentary party selected Candice Bergen of Manitoba as interim leader.<sup>62</sup>

The overthrow of O’Toole and selection of his replacement seems extraordinary in light of the last century of Canadian political history. It appeared that the *Reform Act*



had finally started to break down a system which first emerged when Canadian parliamentary parties surrendered their authority to elect party leaders directly in the late 1910s and 1920s. Shortly thereafter, two Liberal backbenchers openly and publicly criticised the conduct and judgement of Justin Trudeau himself and of the Trudeau ministry as a whole, yet as of Oct. 2022 have not faced any public reprisals in kind and remain members in good standing of the Liberal caucus. On Feb. 8, 2022, Liberal MP Joel Lightbound held a press conference in which he denounced the inconsistencies and vagaries of the Trudeau's pandemic policies; crucially, he also criticised Trudeau's tone, and therefore indirectly questioned his judgement:

I think that it's time to stop dividing Canadians, to stop pitting one part of the population against another. I can't help but notice with regret that both the tone and the policies of my government changed drastically on the eve of and during the last election campaign. From a position and unifying approach, a decision was made to wedge, to divide, and to stigmatise. I fear that this politicisation of the pandemic risks undermining the public's trust in our public health institutions. This is not a risk that we ought to be taking lightly."<sup>63</sup>

At any other time in the last thirty years or so of Canadian politics, the party leader would have immediately punished or outright ousted any backbencher who dared to utter such biting criticism in public — even in previous minority parliaments. (Paul Martin did so in 2004 and Stephen Harper in 2006.) Indeed, Trudeau had himself only three years earlier ousted Wilson-Raybould and Philpott for similarly criticizing his judgement and decisions. Lightbound even went as far as to declare that other

backbench Liberal MPs shared his concerns: "I can tell you that I'm not the only one who feels, to varying degrees, as I do within our ranks. I remain hopeful that this call for more humanism, for more reason, and for more hope, will be heard." Lightbound further criticised the cabinet in the House of Commons later that month during the debates over the *Emergencies Act* on Feb. 21.

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The measures taken under the *Emergencies Act* may have been useful to law enforcement, or even effective, but that does not mean they are necessary or proportionate, nor that they still are as we speak. Personally, I am not convinced. [...] If this evening's vote were not a confidence vote, I would vote against it."<sup>64</sup>

Another Liberal backbencher, Nate Erskine-Smith, followed Lightbound's example. He argued in the House

that the Convoy's blockade did not meet the threshold of a "threat to the security of Canada" under the *Emergencies Act* and the *CSIS Act*. He concluded:

I'm sceptical that the strict legal test was met for the Act's invocation, and I'm not convinced that the emergency measures should continue to exist beyond today. I would vote accordingly, but for the fact it is now a confidence vote. The disagreement I've expressed here does not amount to non-confidence, and I have no interest in an election at this time."<sup>65</sup>

In short, both Lightbound and Erskine-Smith opposed the blockades as well as the Trudeau ministry's decision to invoke the *Emergencies Act* for the first time in response to those blockades. They voted with the government only because the debate amounted to a vote of confidence, and they did not want to precipitate an election. When the cabinet decided to revoke the Order-in-Council under the *Emergencies Act* itself two days later,

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possibly because the Senate seemed poised to veto it, Erskine-Smith publicly expressed his “frustration that this didn’t happen on Monday.”<sup>66</sup> Sadly, in short, backbench MPs in Canada still cannot go quite so far as their British counterparts and vote against matters of confidence in the House of Commons.

The growing dissent within the Liberal parliamentary party might even have prompted Trudeau to negotiate a confidence-and-supply agreement with NDP leader Jagmeet Singh. Trudeau and Singh announced on Mar. 22 their entente “Delivering for Canadians Now,” in which the New Democrats vowed to support the Liberals on key votes of confidence and, in exchange, the Liberals would adopt some of the New Democrats’ policies and pursue others where the two parties agree. They pledged that this agreement should last for the life of the 44th Parliament until the scheduled general election in October 2025.<sup>67</sup> The Liberals and New Democrats combined hold 184 seats in a chamber where 169 constitutes a majority. Ironically, this arrangement has only encouraged and enabled some other centrist Liberal backbenchers to voice their dissent publicly.<sup>68</sup> Veteran Liberal MP Judy Sgro has publicly declared that she might withdraw her support for the entente. Crucially, she added that some other Liberal backbenchers would do the same.<sup>69</sup> It is unclear exactly what this means, but at worst some centrist Liberal backbenchers could break away and form their own parliamentary party or join another, rather as what some Canadian Alliance MPs (the DRC) did in 2001. Even then, in the current House the Liberals and New Democrats combined would still hold a parliamentary majority, unless more than 15 Liberals broke away.

### An impenetrable fortress?

THE *REFORM ACT* HAS so far failed to destroy the King Doctrine of the semi-invincible prime minister, and Canadian politicians themselves from all the major parties usually act as if the Prime Minister can only resign after his party clearly loses a general election and not because the parliamentary party or cabinet wants to oust him and select a new leader.

Yet the *Reform Act* seems to have breached, or begun to breach, what until recently seemed like an impenetrable fortress. The current iteration of the *Reform Act* will only succeed when the parliamentary party which has formed a government decides to apply it to itself. Alternatively, Parliament could enact Michael Chong’s more far-reaching *Reform Act* in its original form, which would have applied the five procedures under the *Parliament of Canada Act* to all recognised parliamentary parties automatically and permanently instead of making them contingent on each parliamentary party voting to apply them to itself for the duration of one parliament at a time.

Fundamentally, the House of Commons and Legislative Assemblies of this country need more thoughtful and courageous backbench MPs willing to speak their minds and disagree with cabinet and the party leadership in public without reprisal — and this will depend in part on whether parliamentary parties assert more control over ousting and electing party leaders, as our parties did before 1919 and which the Australian Liberal and Labor parties and the British Conservative Party still do today.

Only Members of Parliament themselves, who are elected after all and have the direct mandate of their constituents, can make our political culture more mature and accommodating toward differences of opinion within political parties. Perhaps the events of 2022, and the opening created by the *Reform Act*, will begin the trend by reminding politicians, journalists, and citizens alike that only cabinet ministers need to maintain solidarity with each other and that backbenchers do not, and never should have. ✎

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