

## **PRACTICE NOTES**

### **NOTES SUR LA PRATIQUE DU DROIT**

#### **How Governors General Appoint Prime Ministers: Why John Turner Believed That He “Had No Option” and Became the Patronage Patsy of 1984**

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##### **Introduction: A Precedent Known Only Superficially**

On 4 September 1984, Canadians gave Brian Mulroney's Conservatives the largest majority in history, some 211 of 282 seats in the House of Commons and 50.03% of the popular vote; they also reduced John Turner's Liberals to 40 seats, their most severe defeat until Michael Ignatieff's outing in 2011.<sup>1</sup> The Liberals would perhaps have lost in any event given that the Natural Government Party<sup>2</sup> had remained in power for 21 of the previous 22

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<sup>1</sup> Audrey O'Brien and Marc Bosc, "Appendix 12: General Election Results Since 1867 — 33<sup>rd</sup> Parliament," in *House of Commons Procedure and Practice*, 2<sup>nd</sup> Edition (Ottawa: House of Commons of Canada, 2009) [O'Brien & Bosc], at 1278; Lawrence LeDuc *et al.*, "Table 9.4: Results of the 1984 Federal Election, by Province", in *Dynasties and Interludes: Past and Present in Canadian Electoral Politics* (Toronto: Dundurn Press, 2010) [LeDuc], at 359.

<sup>2</sup> According to Peter C. Newman's column first published in 1968, Liberal strategist and cabinet minister Jack Pickersgill referred to the Liberals as "The Government Party." In 2011, Newman attributed a slightly different phrase to Pickersgill, who apparently referred to the Liberals as "the *natural government party*" (emphasis Newman's), and Canadian politicians now often refer to the Liberals by the slightly different variant "the *natural governing party*" (my emphasis). Peter C. Newman, "Jack Pickersgill: 'Sailor Jack' and the Politics of Patronage," 285-300 in *Mavericks: Canadian Rebels, Renegades, and Anti-Heros* (Harper-Collins Publishers Ltd, 2010), 288; Peter C. Newman, "Why the Grits Became the Natural Government Party," chapter 6 in *When the Gods Changed: The Death of Liberal Canada* (Random House Canada, 2011), 80.

years across three prime ministers (interrupted only by Joe Clark's brief interregnum for nine months in 1979-1980), but a patronage scandal played some part in the magnitude of the Conservative victory and the Liberal rout. Even today, Canadian politicians can point to the moment in the English leaders' debate *Encounter '84* where Brian Mulroney admonished John Turner because that famous retort — "You had an option, sir!" — has become the stuff of political legend and the most famous moment in any federal leaders' debate,<sup>3</sup> akin to when Ronald Reagan's posed his iconic ballot question opposite Jimmy Carter in 1980: "Are you better off than you were four years ago?"<sup>4</sup>

Turner kept insisting throughout that debate that he "had no option" but to accept Trudeau's outgoing patronage appointments. While that comment seems at first glance like a typical mendacious misdirection, Turner sincerely believed what he repeatedly said. Pierre Trudeau introduced and Gordon Osbaldeston, the Clerk of the Privy Council, subsequently corroborated and convinced Turner of a fanciful fairy tale of Responsible Government: if Trudeau made all his appointments and reduced the Liberals to a plurality in the House of Commons, then Governor General Jeanne Sauv   might have invited Mulroney to form a government instead in June 1984 — even though the Liberals would still have held a large plurality. Turner so sincerely believed this preposterous absurdity that he promised in writing that he would complete Trudeau's appointments after Sauv   commissioned him to form a government but before the dissolution of parliament. Consequently, Trudeau elevated only six Liberal MPs at the end of June and left some seventeen others to Turner a few weeks later in July.

Why Turner had come to believe that he had no option reveals a strange web of internecine rivalries and machinations within the Liberal Party and the Privy Council Office. The absurd scenario that Trudeau first suggested and which Osbaldeston confirmed directly contradicted the established precedents in Canada, including most notably that from April 1968 where the Governor General appointed Pierre Trudeau as Prime Minister while the Liberals only held a plurality. Governors General also appointed John Diefenbaker in 1957, Lester Pearson in 1963, and Joe Clark in 1979 when their parties only held pluralities. Trudeau tricked Turner into making himself the patronage patsy and undermined his premiership from the outset.

## 1. The Patronage Scandal

Pierre Trudeau took his famous "walk in the snow" and announced on 29 February 1984 that he would step down as leader of the Liberal Party after a delegated convention elected his successor and then resign as prime minister

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<sup>3</sup> Peter Mansbridge, "The Debate That Changed Debates," *Policy Magazine*, September 2019.

<sup>4</sup> David J. Lanoue, "One That Made a Difference: Cognitive Consistency, Political Knowledge, and the 1980 Presidential Debate," *Public Opinion Quarterly* 56, no. 2 (Summer 1992): 168-184.

shortly thereafter.<sup>5</sup> Trudeau had famously announced his resignation once before on 21 November 1979 after losing to Joe Clark's Progressive Conservatives on 22 May 1979;<sup>6</sup> with the unanimous approval of the Liberal parliamentary party, he unresigned on 18 December 1978, a few days after the House of Commons had withdrawn its confidence from the fledgling Tory government on 13 December 1979.<sup>7</sup> Trudeau then triumphantly led the Liberals to one last parliamentary majority (147 of 282) on 18 February 1980.<sup>8</sup> But after leading the Liberal Party for sixteen years (having spent all but nine months of that time as prime minister) and finally achieving his main goal of patriating the *British North America Act* in his second term, Trudeau resigned for good in 1984. John Turner, a former Minister of Justice and Finance under Trudeau's first premiership from 1968 to 1975, won the Liberal leadership convention on 16 June 1984, even though he did not sit in the House of Commons at the time. The House of Commons adjourned for the summer on 29 June, and Governor General Jeanne Sauv   accepted Trudeau's resignation and appointed Turner Prime Minister of Canada on 30 June 1984.<sup>9</sup>

<sup>5</sup> *CBC Digital Archives*, "1984: Trudeau Announces His Resignation," 29 February 1984.

<sup>6</sup> *The Globe and Mail*, "Trudeau Resignation Sad Surprise for Party," 22 November 1979, at 10;

<sup>7</sup> O'Brien & Bosc, *supra*, note 1, at 1278; CBC Archives, "1979: Joe Clark's Government Falls," *The National*, 13 December 1979; House of Commons, *Debates*, 31<sup>st</sup> Parliament, 1<sup>st</sup> Session, 13 December 1979, at 2362; Jeffrey Simpson, "Liberal MPs Unanimous in Wanting Trudeau to Lead," *The Globe and Mail*, 15 December 1979; Paul Palango, "The Winter Campaign: Trudeau's Return Pleases All Sides in Metro Ridings," *The Globe and Mail*, 19 December 1979, at 10.

<sup>8</sup> O'Brien & Bosc, *supra*, note 1, at 1278.

<sup>9</sup> *House of Commons Debates*, 32<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, 33 Elizabeth II, Volume IV, 1984, "Message from the Senate: The Royal Assent," 29 June 1984, at 5345. The Speaker noted that the "this House stands adjourned until Monday, September 10, 1984, at eleven o'clock a.m." Privy Council Office, "Twenty-Second Ministry, 3 March 1980 — 29 June 1984" in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen's Printer, 31 April 2017); Privy Council Office, "Twenty-Third Ministry, 30 June 1984 — 16 September 1984" in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen's Printer, 31 April 2017). Turner resigned on 16 September 1984 after serving only 78 days as Prime Minister of Canada. The Privy Council Office at some point in the late 2010s decided to change its methodology in the online version of the *Guide to Canadian Ministries Since Confederation*, which now records the end of the previous ministry as its last *full* day in office, even though in most cases the Governor General accepted the resignation of the outgoing prime minister and formally commissioned the prime minister-designate on the same day. So, in reality, Pierre Trudeau formally tendered his resignation to Jeanne Sauv   on 30 June, and Sauv   then swore in John Turner about 30 minutes later — as the newspapers made clear at the time — on 30 June. Yet the *Guide to Canadian Ministries Since Confederation* now lists Trudeau's last day in office as 29 June because that was his last *full* day in office. Appendix 6 in *House of Commons Procedure and Practice* preserves the correct date and says that Sauv   accepted the resignation of Trudeau and the 22<sup>nd</sup> Ministry and swore in Turner at the head of the 23<sup>rd</sup> Ministry both on 30 June 1984. Audrey O'Brien and Marc Bosc, "Appendix 6: Government Ministries and Prime Ministers of Canada Since 1867," in *House of Commons Procedure and Practice*, 2<sup>nd</sup>

In the latter half of June 1984, Pierre Trudeau undertook a series of outgoing appointments which engulfed John Turner in a scandal from which he never recovered and which contributed to the unprecedented defeat of the Liberals in the general election later that year. One of Turner's aides predicted to *Maclean's* even before the election that the patronage would cripple the Liberal Party: "I do not recall ever in history a Prime Minister so hamstringing his successor. Is he deliberately trying to make it impossible to win the next election?"<sup>10</sup> Pierre Trudeau ended up making some 225 Order-in-Council appointments in his last few weeks as prime minister from 31 May to 29 June 1984.<sup>11</sup> Trudeau nominated seven of his own current or former political advisors and staffers, which seemed newsworthy enough at the time to appear in the papers.<sup>12</sup>

As of 30 June 1984, Trudeau's outgoing appointments had reduced the Liberal majority in the House of Commons of the 32<sup>nd</sup> Parliament close to a plurality,<sup>13</sup> and *Maclean's* noted that "Turner is uncomfortably close to being an unelected Prime Minister leading a minority government."<sup>14</sup> Turner's camp also noticed the potential problem. Turner promised Trudeau in writing to make his remaining appointments after the transfer of power but before the dissolution of parliament; that way, the Liberals would maintain their parliamentary majority when the Governor General swore in Turner as prime minister. Trudeau appointed 6 of his ministers to patronage posts just before resigning,<sup>15</sup> and John Turner then doled out patronage to 17 additional Liberal MPs (though probably only 11 in accordance with their written agreement)<sup>16</sup> on 9 July 1984, the same day on which the Governor General

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*Edition* (Ottawa: House of Commons of Canada, 2009) [O'Brien & Bosc, Appendix 6], at 1252.

<sup>10</sup> Terry Hargreaves, "Patronage on the Installment Plan," *Maclean's*, 9 July 1984 [Hargreaves], at 9.

<sup>11</sup> Stevie Cameron, "Trudeau Rewarded 225 in 30 Days," *The Ottawa Citizen*, 6 July 1984, at 1.

<sup>12</sup> Hargreaves, *supra*, note 10, at 9; *The Globe and Mail*, "Plums Doled Out to Liberal Caucus," 10 July 1984 [*Globe*, Plums], at 4; *The Globe and Mail*, "MacEachen Departure Opens Door: Turner, Chretien at Standoff," 28 June 1984 [*Globe*, MacEachen], at 1 & 5. To the Senate, Trudeau nominated Joyce Fairbairn (his Legislative Assistant from 1970 to 1984), and Colin Kenney (his former policy advisor). In addition, he doled out a plum diplomatic posting to Ruth Derrick (one of his legislative assistants) as the Consul General in Boston. He also named Marie-Andrée Bastien (his director of correspondence) as the Executive Vice-President of the Canadian Sports Pool Corporation, Edward Johnson (his executive assistant) as a director at De Havilland Aircraft, Jeffrey Goodman (his former special assistant and Director of Public Relations at RJR-MacDonald Inc) to the National Advisory Council on Fitness and Amateur Sport, and Robert Pace (a special assistant in his PMO) as the Director of the Export Development Corporation.

<sup>13</sup> Hargreaves, *supra*, note 10, at 9.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Globe*, Plums, *supra*, note 12, at 4.

dissolved parliament and called a general election on his advice.<sup>17</sup> In total, Trudeau and Turner between them elevated 23 Liberal MPs, or the equivalent of “almost one-sixth of the Liberal caucus” elected in the 32<sup>nd</sup> Parliament in 1980.<sup>18</sup> The Liberals therefore never lost their majority, and Turner never met the House of Commons as prime minister. Whether the Liberals retained their majority or held only a plurality, the Turner ministry, by definition, did not and could not hold the confidence of the House of Commons that it never met.

Turner nominated four Liberal MPs to the Senate of Canada,<sup>19</sup> a further four to the bench,<sup>20</sup> three to diplomatic posts,<sup>21</sup> and six to various boards and commissions.<sup>22</sup> Turner also nominated two other non-MPs who did not factor into the aforesaid calculation.<sup>23</sup> Bryce Mackasey, who had served on and off in Trudeau’s cabinets from 1968 to 1984, became the most controversial of the 17 Liberal MPs whom Turner appointed and ended up symbolising Turner’s corrupt bargain and Liberal patronage as a whole throughout the election in 1984. Though a judge had found “not ‘a shred of evidence’ against him” in

<sup>17</sup> On 9 July 1984, Governor General Sauvé issued the trio of proclamations dissolving the 32<sup>nd</sup> Parliament, issuing the writs of election for a polling day on 4 September, with the writs returnable and summoning the 1<sup>st</sup> session of the 33<sup>rd</sup> Parliament for 24 September 1984. The Prime Minister advised the Governor General on the first and third by instrument of advice, while cabinet issues the operative advice for the second by order-in-council. House of Commons of Canada, *Journals*, 32<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, 1983-1984, Volume 127, “‘Proclamation’ Dissolving Parliament,” at 717; House of Commons of Canada, *Journals*, 33<sup>rd</sup> Parliament, 1<sup>st</sup> Session, 1984-1985-1986, Volume 128, “‘Proclamations’ Issuing the Writs of Election and Summoning the Next Parliament,” at v.

<sup>18</sup> *Globe, Plums, supra*, note 12, at 4.

<sup>19</sup> *Ibid.* Eymard Corbin (MP for Madawaska—Victoria), Thomas Henri Lefebvre (MP for Pontiac—Gatineau—Labelle), Claude Lajoie (MP for Trois-Rivières), as the Gentleman Usher of the Black Rod, and Charles Turner (MP for London East).

<sup>20</sup> *Globe, Plums, supra*, note 12, at 4. Paul Cosgrove (MP for York—Scarborough) became a Judge of the Ontario County Court; Bud Cullen (MP for Sarnia—Lambton) became a Judge of the Federal Court of Canada (Trial Division); Robert Daudlin (MP for Essex-Kent) became a Judge of the Ontario County Court; and Rosaire Gendron (MP for Kamouraska—Rivière-du-Loup) became a Citizenship Judge.

<sup>21</sup> *Globe, Plums, supra*, note 12, at 4. Maurice Dupras (MP for Labelle) became the Consul-General in Bordeaux, France; Bryce Mackasey (Liberal MP for Lincoln) became Canada’s Ambassador to Portugal; and Eugene Whelan (Minister of Agriculture) became Ambassador and Permanent Representative of Canada to the United Nations Food and Agriculture Organisation in Rome.

<sup>22</sup> *Globe, Plums, supra*, note 12, at 4. Rod Blaker (MP for Lachine) became a Member of the National Parole Board; Denis Ethier (MP for Glengarry—Prescott—Russell) became Chairman of the Livestock Feed Board; Paul McRae (MP for Thunder Bay—Atikokan) became the Commissioner of the Canadian Radio-Television and Telecommunications Commission; Arthur Portelance (MP for Gamelin) became a member of the Canadian Aviation Safety Board; Mike Landers (MP for Saint John) became the Canadian Transport Commissioner; and Gérard Laniel (MP for Beauharnois—Salaberry) became a member of the S. Lawrence Seaway Authority.

<sup>23</sup> *Globe, Plums, supra*, note 12, at 4. Léonce Mercier, a Liberal official and Chrétien loyalist, became a Citizenship Judge, while Charles Bédard was named as Canada’s Consul-General in Strasbourg.

1983, accusations of influence-peddling and corruption continued to swirl around Mackasey,<sup>24</sup> not least because his former accountant faced trial in the third week of the election. Turner even then refused to cancel Mackasey's appointment as Canada's ambassador to Portugal and instead stubbornly adhered to his pledge to Trudeau.<sup>25</sup> Worse still, the Department of External Affairs broke diplomatic protocol by failing to obtain the consent of the Portuguese necessary to name Mackasey to Lisbon. As late as 27 August, Jack Webster asked Turner on a televised interview if he would cancel Mackasey's appointment, especially since the Portuguese themselves seemed to express their misgivings about it; Turner replied that he would honour his agreement with Trudeau but that he would not offer Mackasey another appointment.<sup>26</sup> By 19 September 1984, Portugal had still not accepted Mackasey's letters of credence, and Mulroney ended up revoking all of Turner's diplomatic appointments.<sup>27</sup>

After a campaign of 57 days from 9 July to 4 September 1984,<sup>28</sup> Brian Mulroney's Progressive Conservatives won a crushing majority of 211 out of 282 seats in the House of Commons and 50.03% of the popular vote.<sup>29</sup> Turner managed to eke out a victory in his new riding of Vancouver Quadra but presided over the worst loss of an incumbent government up to that time. Sauvé appointed Brian Mulroney as Prime Minister and head of the 24<sup>th</sup> Ministry on 17 September 1984,<sup>30</sup> and the 33<sup>rd</sup> Parliament opened on 5 November 1984.<sup>31</sup>

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<sup>24</sup> Thomas Walkom, "Trudeau Ready for Last Dip into Patronage Pot," *The Globe and Mail*, 22 June 1984, at 5.

<sup>25</sup> Greg Weston, "Anatomy of Defeat: The Inside Story Indicts Turner for Bad Judgement," *The Ottawa Citizen*, 5 September 1984 [Weston, Anatomy], at 9.

<sup>26</sup> John Turner, interview with Jack Webster, *Webster!*, 27 August 1984, accessed 22 February 2024 from the YouTube Channel of B.C. Archives < <https://www.youtube.com/watch?v=wi0nkC1zJpI&t=181s> >

<sup>27</sup> *The Ottawa Citizen*, "Clark Prepares Speech for UN, Gives No Hint on Mackasey Post," 19 September 1984, at A4.

<sup>28</sup> House of Commons of Canada, *Journals*, 32<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, 1983-1984, Volume 127, "'Proclamation' Dissolving Parliament," at 717; House of Commons of Canada, *Journals*, 33<sup>rd</sup> Parliament, 1<sup>st</sup> Session, 1984-1985-1986, Volume 128, "'Proclamations' Issuing the Writs of Election and Summoning the Next Parliament," at v.

<sup>29</sup> O'Brien & Bosc, *supra*, note 1, at 1278; LeDuc, *supra*, note 1, at 359.

<sup>30</sup> Privy Council Office, "Twenty-Fourth Ministry, 17 September 1984 — 24 June 1993," in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen's Printer, 25 September 2023).

<sup>31</sup> House of Commons of Canada, *Journals*, 33<sup>rd</sup> Parliament, 1<sup>st</sup> Session, 1984-1985-1986, Volume 128, "'Proclamation' Postponing the Summoning of the Next Parliament," at vii.

## 2. Trudeau's Offer, Osbaldeston's Memo, and Turner's Letter

### (a) The Offer

Trudeau first informed all the Liberal leadership candidates on 12 April 1984 that he planned to unleash a fusillade of patronage and reward so many Liberal MPs that he would reduce the Liberals to a plurality in the House of Commons. Trudeau therefore also offered his successor the chance of carrying out the appointments in conjunction with the dissolution of parliament, which would make the Liberal plurality moot.<sup>32</sup> However, Turner apparently never mentioned that crucial detail to his own staff at the time.<sup>33</sup> Tom Axworthy, Trudeau's principal secretary, met with John Swift, Turner's principal secretary, and Turner himself on 17 June (the day after the convention) to brief them and brought up the patronage appointments.<sup>34</sup> Canadian historian Paul Litt notes that "Turner turned to Gordon Osbaldeston for advice".<sup>35</sup> Greg Weston, a journalist with *The Ottawa Citizen*, reported in September 1984 that Trudeau laid out two possible scenarios when he met with Turner and Swift on 26 June, four days before the transfer of power:

Trudeau said if he made the appointments of 17 Liberal MPs, Turner would be left in a minority position in the Commons and his government would be brought down by the combined Tory and NDP forces. Governor-General Jeanne Sauvé could also reject Turner's request to form a government in a minority situation and instead call on Brian Mulroney to form a Tory government, Trudeau claimed. Turner agreed to make the appointments when he was ready to call an election. Trudeau put the deal in writing and Turner was to agree in a return letter.<sup>36</sup>

On 27 June, Axworthy met Swift and Turner again and tried to reassure them that Trudeau wanted to make all the appointments; Axworthy went so far as to argue that Trudeau *should* carry them all out himself because "it would be bad politics" if Turner assumed responsibility for some of them.<sup>37</sup> Turner resented the prospect of giving the Conservatives and New Democrats *de facto* control over the timing of an election (which a Liberal plurality would mean); nevertheless, he had agreed at that meeting that Trudeau should nominate all the Liberal MPs himself, and Trudeau seemed delighted.<sup>38</sup> Jeffrey

<sup>32</sup> Paul Litt, *Elusive Destiny: The Political Vocation of John Napier Turner* (University of British Columbia Press, 2011) [Litt], at 255; Greg Weston, "'I Had No Option,'" chapter 1 in *Reign of Error: The Inside Story of John Turner's Troubled Leadership*, 1-14 (McGraw-Hill Ryerson, 1988) [Weston, *Reign*], 2.

<sup>33</sup> Weston, *Reign*, *ibid.*

<sup>34</sup> Litt, *supra*, note 32, at 256.

<sup>35</sup> Litt, *ibid.*, at 256.

<sup>36</sup> Weston, *Anatomy*, *supra*, note 25, at 9.

<sup>37</sup> Weston, *Reign*, *supra*, note 32, at 3.

<sup>38</sup> *Ibid.*, at 4.

Simpson of *The Globe and Mail* corroborated in September 1984 that Trudeau wanted to make all the appointments himself and, in Axworthy's estimation, Trudeau would suffer "any political fallout", rather than Turner.<sup>39</sup> However, Turner had "received advice from Privy Council Clerk Gordon Osbaldeston that such appointments would deprive the Liberals of a parliamentary majority," which, in turn, "might mean that Governor-General Jeanne Sauvé could refuse a dissolution and ask the Tories to form a government".<sup>40</sup> Tom Axworthy joined Turner's campaign manager Bill Lee in advising Turner against making the appointments.<sup>41</sup>

Weston also reported that Swift sought confirmation of Trudeau's two scenarios (that the Commons would bring down Turner's government, or that the Governor General might appoint Mulroney instead of Turner) from the Privy Council Office. "Swift asked the Privy Council Office for a legal opinion and reported back to Turner that both of Trudeau's scenarios were constitutionally possible."<sup>42</sup> In reality, only the first plausible and reasonable scenario conformed to established Canadian precedents; the second could only cling to the limits of being "possible" in the most obtuse sense. According to Weston, Osbaldeston also advised that if Trudeau reduced the Liberals to a plurality, then the Governor General would ask that Turner test the confidence of the Commons "with a reasonable time". This probably meant that Turner could have met the Commons in September when it would emerge from its summer slumber anyway, at which point the Conservatives and New Democrats could vote down the Address-in-Reply and force an election.<sup>43</sup> Osbaldeston should therefore simply have warned Turner that he ran the risk of being forced into an election in the fall, and Turner should have understood this as a reasonable option from a political standpoint, if only because this scenario would have given him the summer to craft a throne speech doubling as a platform and to tour the country during the scheduled royal and papal visits.

On 28 June, Turner changed his mind and asked that he make some of Trudeau's appointments himself to avoid Osbaldeston's outlandish scenario. Axworthy tried to convince Swift to change Turner's mind. He also lambasted Osbaldeston's advice as "absolute nonsense".<sup>44</sup> Turner's about-face so enraged Trudeau that he forced Turner to commit in writing to completing the Liberal patronage appointments after being sworn in as the next prime minister so that he could not change his mind yet again.<sup>45</sup> And Turner's own staff, in turn, found these letters most disconcerting:

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<sup>39</sup> Jeffrey Simpson, "Liberal Ruins Offer Clues to Party's Collapse," *The Globe and Mail*, 6 September 1984, at 8.

<sup>40</sup> *Ibid.*, at 8.

<sup>41</sup> *Ibid.*, at 8.

<sup>42</sup> Weston, *Anatomy*, *supra*, note 25, at 9.

<sup>43</sup> Weston, *Reign*, *supra*, note 32, at 4.

<sup>44</sup> Weston, *Reign*, *supra*, note 32, at 5.

<sup>45</sup> Weston, *Reign*, *supra*, note 32, at 2.



On Thursday afternoon of that week [28 June 1984], Swift told Turner's campaign director Bill Lee about the letter Turner was about to sign. Lee hit the roof and told Turner it could cost him the election if he accepted the Trudeau deal — or win him the election if he rejected it publicly. [. . .]

Aides pointed out to Turner there was no way the NDP, then at nine percent in the polls, were going to combine with the Tories to defeat the Grits and force an election. And there was no chance Sauvé, a former Liberal minister, was going to hand over the reins of power to the Tories who would still have had fewer seats than the Grits if Trudeau had gone ahead with his appointments. Turner never consulted Sauvé on the issue. He simply said he had given his word to Trudeau and wouldn't renege. Besides, he argued, Trudeau had made hundreds of patronage appointments without drawing a peep of public protest. Turner signed the letter later that day [28 June 1984].<sup>46</sup>

Columnist Charles Lynch speculated on 4 September 1984 that Keith Davey (long-time Liberal rainmaker, Senator, and chairman of the campaign) advised Trudeau to obtain Turner's written agreement in June 1984 precisely because Trudeau had refused to complete Pearson's outgoing appointments back in April 1968.<sup>47</sup>

**(b) The Memo: Putting Convoluted Hypotheticals Before the Simple Facts**

Litt records that "At the last meeting of his Cabinet on Thursday, June 28, 1984, Trudeau challenged Osbaldeston on the advice that he had given to Turner" and that Osbaldeston wrote a memo to Trudeau the same day explaining his rationale:

At today's Cabinet you asked about the situation that would arise if you were to make enough appointments that the Government's majority would be lost in the House of Commons. (Current standings in the House are 145 Liberals [including the Speaker], 100 Progressive Conservatives, 31 New Democrats and 1 Independent — taking account of the Speaker, 12 appointments, resignations or withdrawals of support by Government members would be required for the Government to lose its working majority.)

<sup>46</sup> Weston, *Anatomy*, *supra*, note 25, at 9. It should be noted that Paul Litt uncovered the original exchange of letters between Trudeau and Turner and found them both dated as 29 June, rather than 28 June.

<sup>47</sup> Charles Lynch, "Trudeau Appointments Hurt Turner the Most," *The Ottawa Citizen*, 4 September 1984, at 4. "I would not put it past Davey to have suggested to Trudeau that he get a commitment in writing from Turner that the patronage appointments would be made. After all, there was a time when Senator Davey was advisor to Prime Minister Pearson, and Pearson suggested to Trudeau, when he passed him the prime ministership in 1968, that there were some appointments he would like to see made. Trudeau turned his back on Pearson from the moment he was in power, and the appointments were not made."

In our view the starting point is the Governor General's responsibility to have a Government that can command the support of Parliament. She would ordinarily turn to Mr. Turner as the leader of the party with the majority in the House and would expect him to confirm his standing, within a reasonable time, either by winning a vote of confidence in the House or by calling a general election.

The situation would become more complicated, however, if the Government were to be reduced to a minority situation before Mr. Turner was sworn. In most circumstances we would anticipate she would call Mr. Turner in view of the Government's plurality, but she would undoubtedly want some demonstration of confidence as soon as possible, especially if there were substantial question of whether that would be forthcoming. In the extreme case of the Governor General becoming aware that the NDP had indicated it would not support the Government or even that it would support Mr. Mulroney she would be placed in an unprecedented and constitutionally very difficult situation.

It is difficult to predict how the Governor General would act in such circumstances, but clearly it is a situation to be avoided if at all possible. Should a minority occur after the new Government had been sworn to office but before dissolution, the Governor General might want to discuss the situation with her First Minister, but once a government was in place, even if it were a minority, she would be under less obligation to request an immediate test of confidence than she would be at the point she is choosing whom to call upon to form a Government. The critical point is at the moment the Governor General is to exercise her prerogative to install a new Government, and our advice to Mr. Turner was based on the desirability of avoiding the potentially very difficult situation described above.<sup>48</sup>

Osbaldeston believed that Turner could only "confirm his standing" in one of two ways: "either by winning a vote of confidence in the House or by calling a general election". Turner accepted Osbaldeston's advice because he had not yet decided by 28 June whether to seek an election right away in the summer or to wait until the fall, and agreeing to complete Trudeau's appointments himself preserved the Liberal majority at the moment when Sauvé invited him to form a government and allowed Turner "to keep his options open".<sup>49</sup> Turner drew this conclusion based on the second paragraph of Osbaldeston's memo, which suggested that if Trudeau finished making the appointments himself and reduced the Liberals to a minority, then Sauvé would only commission Turner as prime minister if he agreed to hold an election right away. (Of course, this is what Turner ended up doing anyway).

The fatal error and faulty constitutional analysis in Osbaldeston's memo occurs in the third paragraph where he laid out his "extreme case" in which either the New Democrats signalled that they "would not support the [Turner]

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<sup>48</sup> Litt, *supra*, note 32, at 258-259.

<sup>49</sup> *Ibid.*, at 259.

government or even that [they] would support Mulroney.” This “extreme case” in fact bundles together one plausible scenario with one outlandish hypothetical based on wild speculation. The first of the two cases — that the New Democrats would vote down Turner’s minority Liberal government — was both plausible and not at all extreme; only the second scenario merited the description of “extreme,” because no reasonable observer of Canadian politics in June 1984 would have deemed it plausible in the slightest. In other words, Broadbent’s New Democrats probably would have joined Mulroney’s Progressive Conservatives in voting down Turner’s Liberals in order to force an election in the fall of 1984, but under no circumstances would the New Democrats have allied or coalesced with the Progressive Conservatives to support Mulroney as prime minister in a four-year-old parliament. Osbaldeston could only have regarded this second “extreme case” as a legitimate possibility if he had read neither the newspapers nor the House of Commons *Hansard* at all for the previous three weeks.

For example, Ed Broadbent had denounced both John Turner and Brian Mulroney on the weekend of 23-24 June as “the men on the 45<sup>th</sup> floor [. . .] who don’t know about the men and women on the streets below”.<sup>50</sup> Broadbent also remarked on 23 June that “Mr. Turner is clearly as conservative as Mr. Mulroney”.<sup>51</sup> That does not sound like a man who would ally with one leader over the other. Broadbent also excoriated Turner’s victory at the Liberal convention as “a clear triumph of Bay Street over Main Street” and “the ultimate corporate takeover”.<sup>52</sup> Broadbent told reporters on 29 June that Turner “should call an election as soon as possible to get a mandate for action that the country clearly needs”.<sup>53</sup> While Osbaldeston could not have taken that last comment into account in the aforesaid memo of 28 June, he should still have known about Broadbent’s similar statements from earlier in the month. Furthermore, even the Liberals themselves were preparing for the next election at their own leadership convention; *The Globe and Mail* noted on 18 June that Turner and Chretien spent the Liberal leadership convention on 16 June competing over who could best defeat Brian Mulroney in an upcoming election.<sup>54</sup> Finally, a host of Conservative MPs kept talking in the House of Commons throughout May and June 1984 about “the upcoming election” or the “looming election”.<sup>55</sup>

<sup>50</sup> Jim Robb, “Broadbent Unveils NDP Election Strategy with Blistering Attack,” *The Ottawa Citizen*, 25 June 1984 [Robb], at 2.

<sup>51</sup> Jim Robb, “NDP to Spend \$3 Million in Campaign to Woo Voters,” *The Ottawa Citizen*, 23 June 1984, at 5.

<sup>52</sup> Robb, *supra*, note 50, at 2.

<sup>53</sup> *The Ottawa Citizen*, “More Interest Rate Hikes Expected,” 29 June 1984, at 12.

<sup>54</sup> James Rusk, “Tory, NDP Strategists See Chance for Gains,” *The Globe and Mail*, 18 June 1984, at L5.

<sup>55</sup> For example: Bert Hargrave (Conservative MP for Medicine Hat), “Oral Questions — Government Policy,” in *House of Commons Debates*, 32<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, 24 May 1984, at 4011. Hargrave taunted the government: “Is it possible that the Government’s reluctance to act [. . .] relates to the current Liberal leadership

All of this public evidence available before 28 June 1984 clearly demonstrates that the two opposition parties would indeed have carried out the first of Osbaldeston's scenarios and defeated a minority Liberal government, and reasonably so given that the parliament had lived for over four years. But nothing in the public record supported Osbaldeston's second "extreme case", and he therefore had no business taking it into account and feeding Turner this fairy tale. The "extreme case" merited a footnote at best, not a central place alongside the plausible advice that Osbaldeston provided Turner. Ironically, it was Pierre Trudeau, not Ed Broadbent, who had proposed the only coalition that might have happened in the 32<sup>nd</sup> Parliament. Trudeau revealed in his memoirs in 1993 that he had asked Ed Broadbent and some senior New Democrats to join the cabinet at the beginning of the parliament's life in 1980 to provide Western Canada some representation in government but that Broadbent refused because the Liberals held a majority on their own and did not *need* the support of the New Democrats.<sup>56</sup>

Contrary to Osbaldeston's assertion, it would *not* "be difficult to predict how the Governor General would act in such circumstances". Even if Governor General Sauvé had encouraged Turner to test the confidence of the House of Commons as soon as possible, the Commons had just adjourned itself on 29 June until 10 September, and royal and papal visits had been scheduled for July and September, respectively. So Turner could quite legitimately have carried on as prime minister even if Trudeau had reduced the Liberals to a plurality, worked on a throne speech over the summer, and then advised Sauvé to prorogue parliament and open a 3<sup>rd</sup> session in late September after the papal visit. And the New Democrats could have legitimately joined the Progressive Conservatives in voting against the Address-in-Reply, withholding the confidence of the Commons from the minority Liberal government, and forcing an election. None of what Osbaldeston hypothesised in his "extreme case" made any sense, and he ignored several pieces of basic and pertinent information to lend credibility to his bizarre musings.

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campaign, to be followed by the election, of course [...]?" Jim Hawkes (Conservative MP for Calgary West), "Supply," 32<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, 24 May 1984, at 4022. Hawkes declared: "The Government would make the young people of this country much happier if it would call an election."

<sup>56</sup> Pierre Elliott Trudeau, *Memoirs* (Toronto: McClelland & Stewart, 1993), 272-273 [Trudeau, *Memoirs*]. "In an attempt to negotiate some sort of alliance with his party, I offered him [Ed Broadbent] and his colleagues some senior positions in our Cabinet. Even though we had a majority government, my reasoning was that strengthening the government's geographic representation would be very helpful in dealing with crucial national issues like energy and the constitution. We had a lot of members of Parliament from Newfoundland, Nova Scotia, New Brunswick, Prince Edward Island, Quebec, and Ontario, but only a handful of MPs from west of Ontario. The NDP, on the other hand, had a lot of members from everywhere in the West but Alberta. I felt that the unity effort would be strengthened if we could consolidate our forces. There had been talks with the NDP along these lines one and off since Pearson's day, of varying degrees of seriousness. This offer was very serious. But Broadbent declined my offer, because he feared that his party would lose its power and credibility. As it turned out, the NDP did generally support us on the constitution anyway."

Osbaldeston presents Ed Broadbent's eagerness to vote down a Turner government as if this should somehow give Sauvé pause before appointing Turner as prime minister. Nothing could be further from the truth, especially since Osbaldeston also refused to factor in the age of the 32<sup>nd</sup> Parliament. Canadians elected it on 18 February 1980; under s. 4(1) of the *Constitution Act, 1982*, it would have expired by efflux of time five years after "the date fixed for the return of the writs" (10 March 1980) and thus on 10 March 1985.<sup>57</sup> The writ had to last a minimum of 50 days in the 1980s,<sup>58</sup> so the election would have occurred on 29 April 1985. The 32<sup>nd</sup> Parliament had already lasted longer than four years by the time that Turner had become prime minister, so dissolving it for any reason — whether on the initiative of the prime minister or because the opposition had withheld its confidence from the government — would have been perfectly reasonable. Weston believes that "Osbaldeston's advice got twisted and exaggerated amid all the mayhem that engulfed John Turner's first days in office".<sup>59</sup> But in fact, Turner did not twist or exaggerate Osbaldeston's advice at all: Osbaldeston acknowledged to Trudeau that he had impressed upon Turner "the desirability of avoiding the potentially very difficult situation described above", which refers back to his "extreme case" where Jeanne Sauvé might not have called upon Turner and appointed Mulroney instead.

Turner might also have accepted Osbaldeston's preposterous advice because he feared "becom[ing] another 'Willy King' clinging to power".<sup>60</sup> Turner presumably meant that he did not want to follow the example of Mackenzie King, who refused the tender his resignation to Governor General Lord Byng even though he had lost his own seat and Meighen's Conservatives had won the plurality in the House of Commons on 29 October 1925.<sup>61</sup> In that 15<sup>th</sup> Parliament, the House of Commons contained 245 members, which makes a bare arithmetic majority 123 but a practical majority 124 in an era when the Prime Minister appointed the Speaker from the ranks of his own party. The Conservatives won a plurality of 116 — only 8 short of the threshold for a

<sup>57</sup> Audrey O'Brien and Marc Bosc, "Appendix 13: Parliaments Since 1867 and Number of Sitting Days — 32<sup>nd</sup> Parliament," in *House of Commons Procedure and Practice*, 2<sup>nd</sup> Edition (Ottawa: House of Commons of Canada, 2009), at 1285; Canada. Department of Justice, *Constitution Act, 1982*, in *A Consolidation of the Constitution Acts, 1867 to 1982* (Ottawa: Her Majesty the Queen in Right of Canada, 1 January 2021), at 47.

<sup>58</sup> *The Ottawa Citizen*, PM's Trip Points to Sept. 4 Vote," 6 July 1984, at 1.

<sup>59</sup> Weston, *Reign*, *supra*, note 32, at 5. It should be noted that Weston wrote his account in the 1980s before Library and Archives Canada had made Osbaldeston's memo available.

<sup>60</sup> *Ibid.* Here Turner might have used that familiar name "Willy King" because he and William Lyon Mackenzie King both lived in the neighbourhood of Sandy Hill in Ottawa in the 1930s and 1940s and sometimes bumped into one another while walking their respective dogs. Turner therefore talked to King and might have felt as if he had known him. Litt, *supra*, note 32, at 14; Peter C. Newman, *When the Gods Changed: The Death of Liberal Canada* (Random House Canada, 2011), 78.

<sup>61</sup> F.C. Mears, "Promise Is Given to Refrain from Making Appointments," *The Globe*, 4 November 1925; O'Brien & Bosc, *supra*, note 1, at 1274.

practical majority — compared to 101 Liberals, 24 Progressives, 2 Labourites, and 2 independents. The Liberals and Progressives combined held 125 — only one more than a practical majority. Neither configuration proved inherently stable.

However, that precedent does not quite match Turner's predicament in 1984. While Turner at this stage, like King in 1925, did not represent a riding in the House of Commons, King had already served as prime minister for the preceding four years and chose to remain as prime minister because the support of the Progressives gave the Liberals a slim working majority until June 1926. Turner did not seem to understand that the transfer of power between Pearson and Trudeau in 1968 provided both the most recent and most pertinent precedent, because Governor General Michener invited Trudeau to form his first ministry when the Liberals only held a plurality in a three-year-old House of Commons. More bafflingly still, Turner himself straddled both Pearson's ministry and Trudeau's first ministry in 1968! Turner would only have followed King's example if he had waited at least six months to re-enter the House of Commons in a by-election, but his fledgling ministry would probably have faced defeat before that time anyway.

Some questions remain on precisely when Her Excellency Jeanne Sauvé formally recognised Turner as the prime minister-designate and first indicated that she intended to commission him to form the next ministry after Trudeau resigned. The newspapers started referring to Turner as "Prime Minister-designate" by 18 June,<sup>62</sup> though it is possible that they used that term imprecisely in 1984 just as they so often do today and that Sauvé had not yet formally acknowledged the incoming prime minister as the prime minister-designate by that date. But if Sauvé had not done so, then this means that the Privy Council Office started presumptuously granting Turner confidential briefings during a transfer of power and without having waited for the Governor General to name Turner as the prime minister-designate. For instance, Turner first met with Trudeau at 24 Sussex to discuss the transfer of power on 17 June, where Trudeau granted him access to briefings from the civil service; to that end, Turner first met with Osbaldeston on the morning of 18 June.<sup>63</sup>

It is possible that Sauvé did not acknowledge Turner as prime minister-designate until 29 June, when the *Ottawa Citizen* reported:

the transfer of power from Pierre Elliott Trudeau to John Napier Turner moved a step closer today when Governor General Jeanne Sauvé formally asked the prime minister-designate to form a government. The request came during a 50-minute meeting at

<sup>62</sup> Greg Weston and Jim Robb, "Election Fever Grips Liberals," *The Ottawa Citizen*, 18 June 1984, at pages 1 & 10; *The Globe and Mail*, "Profile of a Director," 21 June 1984, at 6; *The Globe and Mail*, "Of Sorrow and Shame," 22 June 1984, at 6; *The Globe and Mail*, "Just What Was Said," 23 June 1984, at 6; Ann Silversides, "Actions Over Japanese Canadians: No Apology for Internments," *The Globe and Mail*, 22 June 1984, at pages 1 & 6.

<sup>63</sup> Litt, *supra*, note 32, at 251.

Government House, where Turner was to present Sauvé with the list of men and women he wants to serve in his cabinet.<sup>64</sup>

But *The Globe and Mail* suggests that Sauvé had already made Turner prime minister-designate at some point before 29 June and that they met that day merely to finalise the list of cabinet ministers whom she would appoint along with Turner the following day, on the 30<sup>th</sup>: “Time is running out to settle the affair as Mr. Turner is to deliver his list of ministers to Governor General Jeanne Sauvé at 11:30 tomorrow morning [30 June].”<sup>65</sup> (The “affair” referred to the tensions between John Turner and Jean Chretien, who had considered resigning because Turner refused to name him to the powerful role of Quebec Lieutenant.)

Osbaldeston would have Turner believe that even though he had started briefing Turner as the incoming prime minister and *de facto* prime minister-designate on 18 June and that Sauvé had probably already indicated that she would ask him to form the next ministry, Sauvé might still have decided not to commission Turner after all if Trudeau had appointed all the Liberal MPs on his list. This beggars belief and defies all Canadian precedent up to that time and today. Canadian journalist Steve Paikin recounts in his recent biography of John Turner that “Osbaldeston later insisted that he never offered such convoluted, ridiculous advice”; however, the historical record says otherwise.<sup>66</sup>

### (c) The Exchange of Letters Between Pierre Trudeau and John Turner

Paul Litt also produced the letters that Trudeau and Turner exchanged with one another on 29 June 1984, the last full day of Trudeau’s premiership. Trudeau wrote:

In every case these are individuals who have served the government and the Party well, and I am committed to promoting their future careers. Our desire to assist our colleagues, however, must be balanced with the need to maintain a majority in the House of Commons. Therefore, I will not exercise my prerogative to submit all of my proposed appointments to the Governor General, but I ask you to make an undertaking to follow through with the remaining appointments prior to any dissolution.<sup>67</sup>

Turner replied succinctly the same day: “I am in agreement with the terms of the letter, and I undertake to you that I will make the appointments on your list prior to any dissolution.”<sup>68</sup>

Trudeau also boxed Turner in by having informed the Liberal parliamentary party at his last meeting with caucus as prime minister on 28

<sup>64</sup> *The Ottawa Citizen*, “Turner Shows Sauvé Partial Cabinet List,” 29 June 1984, at 1.

<sup>65</sup> *Globe*, MacEachen, *supra*, note 12, at 1 & 5.

<sup>66</sup> Steve Paikin, *John Turner: An Intimate Biography of Canada’s 17th Prime Minister* (Toronto: Sutherland House, 2022), 123.

<sup>67</sup> Litt, *supra*, note 32, at 259-260.

<sup>68</sup> *Ibid.*, at 260.

June — the day before they exchanged their letters — that they need not worry because Turner had pledged to finish carrying out the patronage appointments.<sup>69</sup>

### 3. Contemporary Reaction to The Patronage Scandal and the Trudeau-Osbaldeston Doctrine

#### (a) Journalists

Turner held a press conference on the grounds of Rideau Hall immediately after Governor General Jeanne Sauv   swore him in as Prime Minister of Canada on 30 June 1984, where he acknowledged the existence of the letters. Richard Gwyn, a columnist for the *Toronto Star*, asked Turner:

Gwyn: “Prime Minister, you and Mr. Trudeau have exchanged letters concerning the appointments that you are going to make on his behalf. Why was it necessary for the two of you to put this in writing and sign it rather than treat it as a matter of trust which would be normal between two Liberal colleagues?”

Turner: “Well, ah, that would have been satisfactory to me. Perhaps he felt he had to assure those members of his caucus to whom he had made the commitments, but I really did not explore his mind.”<sup>70</sup>

Turner denied personal responsibility and told the press that they should treat the appointments that he had pledged to make as Trudeau’s.<sup>71</sup> This exchange occurred more than one week before Turner had made the appointments and might mean that Trudeau’s camp had leaked the existence of the letters to Gwyn, who made no secret of being pro-Trudeau.

He held another press conference at Rideau Hall on 9 July after securing the dissolution of parliament and a general election from Governor General Sauv  , where he also announced that he had undertaken Trudeau’s final appointments that day to preserve “a majority in the Commons in order to advise Mrs. Sauv   of the need for an election”.<sup>72</sup> Terry Milewski of CBC News asked about the patronage appointments; in his response, Turner erroneously attributed all but 1 of his 19 appointments to Trudeau.

Milewski: “Prime Minister, your call for an election is accompanied by yet another round of Liberal patronage appointments. In the past, you have indicated that we should consider these appointments

<sup>69</sup> Turner, interview with Jack Webster, 27 August 1984; John Turner, “Leaders’ Debate: *Encounter ’84*,” broadcast on 25 July 1984, accessed on 20 February 2024, <<https://www.youtube.com/watch?v=Ydv3f4Qfd0E&t=5813s>>, at 21:37 [*Encounter ’84*].

<sup>70</sup> Weston, *Reign*, *supra*, note 32, at 8; Charlotte Montgomery, “Turner Launches Campaign to Sell ‘New Era,’” *The Globe and Mail*, 2 July 1984 [Montgomery], at 5.

<sup>71</sup> Montgomery, *ibid.*, at 5.

<sup>72</sup> Jeff Sallot, “Turner Seeks ‘New Mandate’ — Queen to Visit Sept. 24 to Oct. 7,” *The Globe and Mail*, 10 July 1984, at 1.



to be Mr. Trudeau's. You have also promised us a new style of government. Would you be prepared to indicate that new style, here and now, by repudiating the principle of rewarding the party faithful with public money?"

Turner: "The appointments that were announced earlier today, except one, were in furtherance of my commitment to Mr. Trudeau, my predecessor, or had been discussed and agreed to at cabinet meetings of the previous administration."<sup>73</sup>

According to Weston, only 11 of the 17 Liberal MPs whom Turner appointed on 9 July had appeared on Trudeau's list, which means that Turner added 6 of his own.<sup>74</sup> Chretien pressured Turner to give Eugene Whelan the diplomatic appointment in Rome,<sup>75</sup> and Turner added Arthur Portelance, Paul Cosgrove, and Maurice Dupras on his own; the identities of the fifth and sixth remain unknown.<sup>76</sup> Trudeau therefore resented that Turner kept referring to all the appointments of 9 July as flowing from their agreement.<sup>77</sup> Marc Lalonde (Minister of Finance under both Trudeau and Turner) called Turner "a few days" after 9 July 1984 to deliver Trudeau's threat: if he kept blaming Trudeau for the patronage appointments that he made on 9 July just before advising the Governor General to dissolve parliament, then Trudeau would publish their exchange of letters.<sup>78</sup> Axworthy also objected to how Turner blamed Trudeau.<sup>79</sup>

Turner explained to reporters three days later on 12: "that Privy Council Clerk Gordon Osbaldeston had advised that, should he appear before Governor-General Jeanne Sauvé without 'a nominal majority' of Liberal MPs, 'that might have well called into question my ability to be invited to form a Government'".<sup>80</sup> When reporters asked Turner if "the agreement that Mr. Trudeau demanded from him in writing amounted to blackmail", Turner replied: "'That's not the word that I would use, but I certainly wanted to preserve my constitutional integrity'".<sup>81</sup> That did not strike many observers as a convincing rebuttal, and the narrative of Trudeau's blackmail stuck and made Turner look feckless. *The Globe and Mail* also reported on 13 July that Turner "refused to discuss comments from former senator Eugene Forsey, a noted constitutional expert, that Mr. Osbaldeston's advice amounted to incorrect 'nonsense' and 'a mere novel figment of someone's imagination'".<sup>82</sup>

<sup>73</sup> Weston, *Reign*, *supra*, note 32, at 8.

<sup>74</sup> *Ibid.*, at 9.

<sup>75</sup> Weston, *Reign*, *supra*, note 32, at 10.

<sup>76</sup> *Ibid.*, at 10-11.

<sup>77</sup> *Ibid.*, at 13.

<sup>78</sup> *Ibid.*, at 1-2.

<sup>79</sup> *Ibid.*, at 1-2.

<sup>80</sup> Montgomery, *supra*, note 70, at 1.

<sup>81</sup> *Ibid.*, at 2.

<sup>82</sup> *Ibid.*, at 2.

**(b) Constitutional Scholars**

The English-language leaders' debate reignited the firestorm surrounding Liberal patronage appointments, and Turner reiterated at a press conference held the day after the debate on 26 July: "we might well have been in a position where a government could not have been formed" if Trudeau had made all the appointments himself and reduced the Liberals to a plurality. Turner also revealed that it was Trudeau who had originally come up with the plan and that Osbaldeston merely corroborated Trudeau's concerns: "Mr. Turner said he was advised by Privy Council Clerk Gordon Osbaldeston that he had to follow the retiring prime minister's plan", wrote *The Globe and Mail*.<sup>83</sup> Eugene Forsey provided another comment to the press, calling the Trudeau-Osbaldeston Doctrine "absolute rubbish" and Osbaldeston himself a "jackass bonehead" for having "misled Turner on patronage".<sup>84</sup> Forsey added that "Mr. Turner could well have formed a government and do what he eventually did anyway — seek dissolution and get an election".<sup>85</sup>

Forsey also argued that "there was never any real chance that Mrs. Sauvé might have asked Conservative Leader Brian Mulroney to try to form a government".<sup>86</sup> Finally, Forsey admonished Turner for trying to blame the Clerk of the Privy Council and argued that "the responsibility rests with the Prime Minister and he should have rejected Mr. Osbaldeston's advice".<sup>87</sup> Peter Russell, then a Professor of Political Science at the University of Toronto, agreed with Eugene Forsey on all counts.<sup>88</sup> Apparently, so, too, did Osbaldeston himself. Like Trudeau, Osbaldeston resented Turner for having publicly identified him throughout the campaign as the source of the preposterous constitutional advice that Sauvé might have called upon Brian Mulroney instead. He "warned Turner not to repeat the accusation" again, and Turner dutifully obliged.<sup>89</sup> Yet Osbaldeston's memo shows that he had in fact made the outlandish claim and that therefore Turner spoke true. The Prime Minister should not criticise the Clerk of the Privy Council in public, yet the Clerk of the Privy Council should likewise not give the Prime Minister erroneous advice.

Edward McWhinney, a constitutional lawyer and professor at Simon Fraser University, concurred with Eugene Forsey and Peter Russell in his own column to *The Globe and Mail*. McWhinney argued that Governor General Sauvé would have commissioned Turner to form a government even if Trudeau had finished making all his appointments and reduced the Liberals to a plurality because the weight of Canadian precedents up to that time (and,

<sup>83</sup> Jeff Sallot, "Experts Flay Patronage Defence," *The Globe and Mail*, 27 July 1984 [Sallot], at 5.

<sup>84</sup> *The Ottawa Citizen*, "Turner Misled on Patronage," 11 July 1984, at 4.

<sup>85</sup> Sallot, *supra*, note 83, at 5.

<sup>86</sup> *Ibid.*, at 5.

<sup>87</sup> *Ibid.* at 5.

<sup>88</sup> *Ibid.* at 5.

<sup>89</sup> Weston, *Reign, supra*, note 32, at 7-8.

indeed, today) supported keeping the incumbent party in power, even if it went from a majority to a plurality.

Even without the 17 patronage-headed Cabinet ministers and Government MPs, the Liberals would still have remained much the largest party in the federal House. The Canadian practice in modern times, as developed and applied in the six minority governments situations of 1957, 1962, 1963, 1965, 1972, and 1979, has been to account the mandate to form a government to the largest party in the House, and to leave it to the House itself to make any necessary political correction by subsequent parliamentary vote.<sup>90</sup>

McWhinney also rejected Osbaldeston's "extreme case" that Sauvé would have called upon Mulroney instead of Turner if Trudeau had reduced the Liberals to a plurality:

For Governor-General Sauvé to have opted for Mr. Mulroney, and not Mr. Turner, as successor to retiring Prime Minister Trudeau would have been to ignore the elementary facts of the respective party strengths in the House (even after the departure of 17 patronage beneficiaries) [. . .]. It would also have been an act to high political folly unless Madame Sauvé had personal guarantees from NDP leader Ed Broadbent of unequivocal support for Mr. Mulroney.<sup>91</sup>

Nothing in the press coverage lent credence to the notion that Broadbent would have supported Mulroney — quite the opposite, in fact. However, Douglas Sanders, Professor of Constitutional Law at the University of British Columbia, wrote a letter to the editor to *The Globe and Mail* upholding Osbaldeston's "extreme case" and disagreeing with Forsey, Russell, and McWhinney. But Sanders, like Osbaldeston, based his argument on pure hypotheticals which the particular facts of this case had already rendered moot.

I was surprised at the reaction of Eugene Forsey [. . .] to John Turner's explanation of his patronage appointment.

Mr. Turner said he needed to preserve his parliamentary majority to be able to deal with the Governor-General. While there are controversies on the question, there is a clear pattern of a Governor-General suggesting that he or she would not have to follow the advice of a Prime Minister who did not command a majority in Parliament. This was the key element in the King-Byng Affair of 1926, Edward Schreyer's 1979 delay in granting dissolution to Prime Minister Joe Clark, the parliamentary crisis of 1979 in India, and the dismissal of Australian Prime Minister Gough Whitlam in 1975.

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<sup>90</sup> Edward McWhinney, "A Way to Handle Patronage," *The Globe and Mail*, 5 September 1984, at 7.

<sup>91</sup> *Ibid.*, at 7.

While one would expect that Jeanne Sauvé would take Mr. Turner's advice, she would have been put in an awkward position if Brian Mulroney had publicly claimed the right to be invited to form a government on Mr. Turner's loss of a majority.<sup>92</sup>

First, Sanders employs some circular logic that "a Governor General would not have to follow the advice of a Prime Minister who did not command a majority" and writes as if the question hinged on whether Sauvé would have rejected Turner's advice to dissolve parliament; in fact, Osbaldeston's "extreme case" postulated that Sauvé would not have made Turner Prime Minister at all in the first place. The Governor General cannot reject the constitutional advice of someone whom she has not appointed as Prime Minister. In addition, the Turner Ministry never met the House of Commons.

Second, Sanders made the same mistake as Osbaldeston of relying on a hypothetical that never happened and treating the most extreme and unlikely scenario as if it were the most probable and reasonable course. Brian Mulroney never suggested in any public forum in 1984 that he would have claimed the right to form a government if the Liberals had reduced themselves to a plurality. Mulroney later explained in his autobiography in 2007 that he never contested Trudeau's or Turner's right to make the patronage appointments, even if they reduced the Liberals to a plurality. In addition, Mulroney had anticipated that Turner would make the patronage appointments in accordance with his promise to Trudeau, deprive the Liberals of a majority in the summer of 1984, and subsequently meet the Commons with a Throne Speech in the fall of 1984.

I wrote down six reasons why Prime Minister Turner would *never* call a summer election:

1. He had all summer to travel the country to reunite the party following the divisive race with Jean Chretien.
2. He would look prime ministerial during the scheduled visit of the Queen.
3. He would shore up support amongst Roman Catholics during the September pilgrimage of the Pope to Canada.
4. He could distance himself from Trudeau by introducing a Throne Speech and budget in the fall session of Parliament.
5. He could use the time to distance himself from the Trudeau patronage appointments he agreed to make.
6. He could use the time to recruit star candidates that would now be attracted to a Liberal Party revitalized by a new leader.<sup>93</sup>

Turner could only have "distance[d] himself from the Trudeau patronage appointments that he agreed to make" by the fall of 1984 if he had made the

<sup>92</sup> Douglas Sanders, "Awkward for Sauvé," *The Globe and Mail*, 25 August 1984, at 7.

<sup>93</sup> Brian Mulroney, *Memoirs, 1939-1993* (Toronto: McClelland & Stewart, 2007), 293, emphasis added.

appointments in the summer of 1984. Mulroney never wanted to become prime minister in the 32<sup>nd</sup> Parliament instead of leading the Progressive Conservatives to a majority and winning his own popular mandate, and neither Osbaldeston nor Sanders should have presumed otherwise given the evidence publicly available in June 1984.

Third — and once more, like Osbaldeston — Sanders refused to factor in the age of the 32<sup>nd</sup> Parliament, which had already existed for more than four years when Turner became prime minister. Fourth, the strange precedent from December 1979 where Schreyer unnecessarily made Joe Clark wait two hours before granting him a dissolution of the 31<sup>st</sup> Parliament after losing a vote of confidence on a supply bill does not, in fact, support Sanders's argument but instead points to the opposite conclusion. Schreyer would only have made Clark wait because he wanted to ascertain if the Liberals could form an alternative government from within the existing House of Commons; having determined that Trudeau and the Liberals were *not* willing or able to form a government that could plausibly command the confidence of the Commons, Schreyer had no other choice but to dissolve parliament.<sup>94</sup> The same applied in 1984: the House of Commons of the four-year-old 32<sup>nd</sup> Parliament would never have supported an alternative government from within its ranks, because Broadbent's New Democrats would have both voted against Turner's Liberals and also simultaneously opposed Mulroney's Conservatives. In addition, Mulroney would never have accepted becoming prime minister until after winning a general election. Therefore, only dissolving parliament could break the impasse.

Fifth and finally, it is telling that Sanders cited two irrelevant foreign examples from India and Australia instead of looking to the pertinent Canadian precedents from the minority parliaments elected in 1957, 1962, 1963, 1965, 1972, and 1979. In all six cases, without exception, the leader of the party which won the plurality of seats in a minority parliament either became the new Prime Minister (as in 1957, 1963, and 1979), or remained in office as the incumbent Prime Minister (as in 1962, 1965, and 1972).

In June 1957, incumbent Liberal Prime Minister Louis St. Laurent decided to resign one week after the election once the overseas military ballots had been counted. John Diefenbaker had led the Progressive Conservatives to a plurality but in a very close margin in this minority parliament: 112 seats to the Conservatives, 105 to the Liberals, 25 to the Cooperative Commonwealth Federation, and 19 to Social Credit.<sup>95</sup> The Liberals could have formed a coalition or struck a confidence-and-supply agreement with the Co-operative Commonwealth Federation (forerunner to the New Democratic Party), with their combined 130 seats, though the Progressive Conservatives could also have combined forces with the right-wing Social Creditists for a total of 131 seats. The 4 independents could have determined who governed. But the

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<sup>94</sup> Anne Twomey, *The Veiled Spectre: Reserve Powers of Heads of State in Westminster Systems* (Oxford University Press, 2018), 379 & 435.

<sup>95</sup> O'Brien & Bosc, *supra*, note 1, at 1276.

Liberals had by 1957 remained in government uninterrupted for the previous twenty-two years, and the momentum had swung against them; St. Laurent opted to resign.<sup>96</sup> Diefenbaker then led his Conservatives to the largest majority in Canadian history up to that point in his snap election in March 1958.<sup>97</sup>

In June 1962, the voters decided to reduce the Progressive Conservatives to a plurality, but the erratic Diefenbaker opted to test the confidence of the new House of Commons, where 116 Conservatives (18 short of a practical majority) and 30 Social Creditists gave the right-wing block 146 seats versus a left-wing block of 119 seats, with 99 Liberals, 1 Liberal-Labour MP, and 19 for the Co-operative Commonwealth Federation (CCF). But after five ministers resigned in February 1963,<sup>98</sup> Lester Pearson tabled a motion of non-confidence,<sup>99</sup> which the CCF and Social Creditists supported; the Commons voted 142 to 111 against the Diefenbaker government on 5 February 1963.<sup>100</sup> In that election of April 1963, Lester Pearson led the Liberals to a strong plurality of 128 (only 6 short of the minimum practical majority) opposite 17

<sup>96</sup> Peter Russell, *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy* (Toronto: Edmond Montgomery Publishing, 2008), 25-26.

<sup>97</sup> O'Brien & Bosc, *supra*, note 1, at 1276.

<sup>98</sup> Privy Council Office, "Eighteenth Ministry, 21 June 1957 to 22 April 1963," in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 14 March 2024.

<sup>99</sup> The House of Commons ended up adopting two successive motions by which it withdrew its confidence from the Diefenbaker government, both by a margin of 142 to 111. Lester Pearson (Leader of the Liberal Party) and Lionel Chevrier (Liberal MP for Laurier) introduced the first, while Social Credit MPs Robert N. Thompson (MP for Red Deer) and Guy Marcoux (MP for Quebec — Montmorency) introduced the second. House of Commons of Canada, *Journals*, 25<sup>th</sup> Parliament, 1<sup>st</sup> Session, 11 Elizabeth II, No. 72, Tuesday, 5 February 1963, at pages 472-475.

The original two motions read as follows:

"Mr. Pearson, seconded by Mr. Chevrier, moved in amendment thereto, — That the after after "That" be deleted and the following substituted therefor: 'this government, because of lack of leadership, the breakdown of unity in the Cabinet, and confusion and indecision in dealing with national and international problems, does not have the confidence of the Canadian people.'"

"Mr. Thompson, seconded by Mr. Marcoux, moved in amendment to the said proposed amendment, — That all the words after 'government' be deleted and the following substituted therefor: 'has failed up to this time to give a clear statement of policy respecting Canada's national defence, and has failed to organize the business of the House so that the 1963-64 Estimates and Budget could be introduced, and has failed to outline a positive programme of follow-up action respecting many things for which this Parliament and previous Parliaments have already given authority, and does not have the confidence of the Canadian people.'"

House of Commons of Canada, *Journals*, 25<sup>th</sup> Parliament, 1<sup>st</sup> Session, 11 Elizabeth II, No. 71, Monday, 4 February 1963, at 470.

<sup>100</sup> Diefenbaker responded to the stunning loss simply by saying: "Mr. Speaker, I shall advise His Excellency the Governor General tomorrow" and moved to adjourn. John Diefenbaker (Prime Minister), "Alleged Leader of Government Leadership," House of Commons of Canada, *Debates*, 25<sup>th</sup> Parliament, 1<sup>st</sup> Session, 11-12 Elizabeth II, Volume 3, Tuesday, 5 February 1963, at 3463.

New Democrats, 95 Conservatives, and 24 Social Creditists; in that case, Diefenbaker resigned and made way for Pearson.<sup>101</sup> On 8 November 1965, Canadians elected a House of Commons containing almost exactly the same number of MPs for each party as the previous election in 1963 (130 Liberals, 1 Liberal-Labour, 97 Progressive Conservatives, 21 New Democrats, 9 Creditistes, 5 Social Creditists, 1 Independent Progressive Conservative, and 1 Independent), with a Liberal plurality four short of a practical majority; Pearson therefore continued as prime minister.<sup>102</sup>

The 1970s saw two non-consecutive minority parliaments. In 1972, Pierre Trudeau's Liberals won only two more seats than the Progressive Conservatives (109 vs 107) and fell 25 short of a practical majority, but Trudeau remained Prime Minister with the support of the 31 New Democrats led by Tommy Douglas. Trudeau led the Liberals back to a narrow majority in 1974.<sup>103</sup> However, in the subsequent general election of 1979, Joe Clark's Conservatives won 136 of 282 seats (6 short of a practical majority) opposite 6 Social Creditists, 114 Liberals, and 26 New Democrats; Trudeau resigned and made way for Clark, whose ill-fated 21<sup>st</sup> Ministry lasted only nine months.<sup>104</sup>

### (c) The Leaders' Debate and Televised Interviews

Turner's corrupt bargain with Trudeau haunted him throughout virtually the entire campaign in July and August, most famously in the main English-language leaders' debate *Encounter '84* on 15 July 1984. Brian Mulroney's dramatic rebuke, "You had an option, sir!" became iconic during the campaign in 1984 and has since cemented itself as the stuff of Canadian political legend.<sup>105</sup> But during the rest of their exchanges on patronage, Turner confirmed that he pledged to Trudeau in writing to finish carrying out his appointments so that the Liberals would retain their majority during the transfer of power, which, in his mind, became necessary to allow him to form a government.

The journalists on the panel prompted Turner and Mulroney several times on the question of patronage. Bruce Phillips, the Ottawa Bureau Chief of CTV News, asked Prime Minister Turner about Pierre Trudeau's outgoing patronage appointments. He also alluded to how Eugene Forsey, Peter Russell, and others had denounced Osbaldeston's advice as nonsense.

It's back to those wretched patronage appointments, Mr. Turner, I'm afraid. We here didn't think your answer last night on the French debate got to the basic issue, which was the quality of your judgement in that particular case. You said you didn't want to make

<sup>101</sup> O'Brien & Bosc, *supra*, note 1, at 1277.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> O'Brien & Bosc, *supra*, note 1, at 1278; Privy Council Office, "Twenty-First Ministry, 4 June 1979 to 2 March 1980," in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 14 March 2024.

<sup>105</sup> Turner, Leaders' Debate, *supra*, note 69.

those appointments, you didn't think they were very good ones, but that Mr. Trudeau had held a gun to your head. Some conversational [*sic*, constitutional] experts now say the gun didn't have any bullets in it, but we'll put that aside. Why didn't you, Mr. Turner, tell Mr. Trudeau that if he wanted to go down in history as the man who sabotaged the party that had given his trust for 16 years, he was quite free to do that, but you were not going to stain your administration on the very first day of its life by agreeing to an unsavory bargain?<sup>106</sup>

John Turner responded:

I'm going to say to you as I said throughout the past two weeks that Mr. Trudeau had every right and privilege as prime minister of this country to make all of these appointments before he resigned. And he was prepared to do so. And he spoke to the caucus to that effect. Now, that would have placed me in a minority position, having a minority of seats in the House, and the advice I got — and there may be contrary advice that's available — but the advice I received, and I had the job and I had the evaluation to make, is that if that were to happen, the Governor General could have refused me the responsibility of forming government. Now, that happens to be a fact. So I'm saying to you that I had no option.<sup>107</sup>

John Turner sincerely believed in Osbaldeston's "extreme case" and that Governor General Jeanne Sauvé would have refused to appoint him as the next Prime Minister of Canada. But Bruce Philips rejected Osbaldeston's reasoning and alluded to all these previous precedents from 1957 to 1979, where the leader of the largest party in the House of Commons — whether it holds an outright majority or only a plurality — would become Prime Minister:

Just may I make one very brief point of clarification on this very issue? You still would have had the largest number of seats in the House, the normal basis on which a party leader is asked to form a government. Were you given any indication by the Governor General or anybody in Government House that you would not be called upon to form a government?

Turner did not respond as to whether he had heard anything from Governor General Sauvé herself or the Office of the Governor General but simply reiterated that he accepted Osbaldeston's advice:

That was the opinion and the understanding that that I received. And I'm telling you frankly — I'm telling the Canadian people frankly — that I had no option. And I'm saying this, I'm saying this to Canadians, and I'm not telling one story to members of my party and another story to the people of Canada. That is the situation the way I found it, and I tell you, sir, I had no option.<sup>108</sup>

<sup>106</sup> *Ibid.*, at 20:42.

<sup>107</sup> *Ibid.*, at 21:37.

<sup>108</sup> *Ibid.*, at 23:49.



It is worth noting that according to Greg Weston, the Governor General had nothing to do with the Trudeau-Osbaldeston Doctrine, and Turner never consulted Sauvé.<sup>109</sup> The debate moved on to other matters for the next hour but returned to the patronage appointments toward the end. Mulroney encouraged Turner:

[...] please produce the secret letter that you signed that you undertook to make these appointments [ . . . ].”<sup>110</sup>

Turner replied:

I’ve taken the Canadian people through the circumstances. Mr. Trudeau had every right to make those appointments before he resigned. In order that he not do so, yes, I had to make a commitment to him; otherwise I was advised that with serious consequences to the Canadian people, I could not have been granted the opportunity of forming a government.<sup>111</sup>

The following month, Turner recorded an interview with Jack Webster, a swaggering Glaswegian journalist based in Vancouver, which aired on 27 August 1984. Turner laid out once more the background on the patronage appointments.<sup>112</sup>

Turner: “I made an undertaking to the Prime Minister [Pierre Trudeau]. He could have made all those appointments himself. I operated on the basis of the facts I had at the time, Jack. I operated on the basis of the advice I received at the time. I completed some of those appointments in order to preserve a majority in the House of Commons. [ . . . ]

Webster: “But with hindsight, do now confess or admit that it was a mistake to sign that secret deal with Trudeau [ . . . ]?”

Turner: “Well, there’s no doubt about it that the Prime Minister went to caucus before I was sworn in and told the caucus that he would get an undertaking from me, and if he didn’t, he would make those appointments.”

Webster seemed incredulous that the Governor General could even have asked Brian Mulroney to form a government in June 1984. He also suspected (probably correctly) that Trudeau had set Turner up to fail and that Trudeau had originally given him this disastrous advice.

Webster: “Let me get this clear, sir. Are you telling me that Trudeau, had he appointed these MPs — 17 or 19, whatever it was — by himself, that *you* might not have been able to form a government at

<sup>109</sup> Weston, *Anatomy*, *supra*, note 25, at 9.

<sup>110</sup> *Encounter ’84*, at 1:36:09.

<sup>111</sup> *Ibid.*, at 1:37:18.

<sup>112</sup> Turner, interview with Jack Webster, 27 August 1984. The relevant portions of the interview runs from 4:38 to 8:14.

that juncture? Is that what you're telling me? That the Governor General might have sent for *Mulroney*?"

Turner: "That is right, sir."

Webster: "Was this Trudeau's advice to you?"

Turner: "This was the advice I got from the Clerk of the Privy Council and from the Department of Justice and from some others."

Webster: "So that was why you signed the deal?"

Turner: "That was the only way that I could have a whole list of options as to whether to form a government, to whether to call an election or not call an election. And as I say, Mr. Trudeau had the ultimate discretion himself as Prime Minister to make all those appointments that he wanted." [ . . . ]

Webster: "Will you release the Trudeau-Turner Letter?"

Turner: "I like that I think that that is a letter between two to prime ministers, and the custom is that that remain in confidence."

Turner hinted that he did not like the arrangement (Trudeau "had the ultimate discretion [ . . . ] to make all those appointments that he wanted") and also identified Osbaldeston by his title as the source of the advice — despite having earlier been warned against invoking either name.

#### **4. The Best and Most Reasonable Interpretation of How Governors General Appoint Prime Ministers in Canada**

##### **(a) The Constitutional Conventions of Appointing and Dismissing Prime Ministers**

The King of Canada appoints the Governor General of Canada upon the advice of the Prime Minister of Canada, and the Governor General and Prime Minister both derive their executive authority from the Crown. The Governor General appoints the Prime Minister based on the authority delegated by the King under the *Letters Patent Constituting the Office of the Governor General*,<sup>113</sup> and the Prime Minister and ministry as a whole take responsibility for all acts of the Crown promulgated in the name of the King.<sup>114</sup> The Governor General must guarantee that a duly-appointed

<sup>113</sup> Christopher McCreery, "Myth and Misunderstanding: The Origins and Meaning of the Letters Patent Constituting the Office of the Governor General 1947," Chapter 3 in *The Evolving Canadian Crown*, edited by Jennifer Smith and D. Michael Jackson, 31-56 (Montreal-Kingston: McGill-Queen's University Press, 2011), 32. As McCreery shows, the King of Canada — not the Governor General — remains the source of the constitutional powers and authorities by virtue of s. 9 of the *Constitution Act, 1867*. This is why the *Letters Patent* have delegated, not transferred, authority from the King to the Governor General, who represents the King.

<sup>114</sup> Sir John George Bourinot, *Parliamentary Procedure and Practice*, 4<sup>th</sup> ed. (Montreal: Dawson Brothers Publishing, 1916): 102.

ministry is always in office so that the King's business always carries on; therefore, appointing and dismissing Prime Ministers remains the Governor General's paramount constitutional duty, as well as a uniquely personal decision that the Governor General exercises without strict constitutional advice.<sup>115</sup> But practical necessity — derived from constitutional norms rather than a set of criteria codified in statute or in the *Constitution Acts* — tempers how the Governor General wields this discretionary authority to appoint and dismiss Prime Ministers. The Governor General cannot appoint whomever she wishes on a whim to form a government in the King's name but has instead always appointed the leader of the political party which has either an outright majority or a plurality of MPs in the House of Commons.

In Canada, the tenure of the Prime Minister determines the tenure of the ministry as a whole; therefore, the Prime Minister's resignation or death automatically forces the resignation of the entire ministry at once.<sup>116</sup> The *Oxford Dictionary* defines a ministry as “a period of government under one prime minister,” and the Privy Council Office has rigorously hewed to that definition in its *Guide to Canadian Ministries Since Confederation*.<sup>117</sup> A single ministry can therefore span multiple parliaments, and a single parliament could include multiple ministries.<sup>118</sup> For instance, Stephen Harper's 28<sup>th</sup>

<sup>115</sup> Canada, Department of Canadian Heritage, *Ceremonial and Protocol Handbook*. (Ottawa: Government of Canada, c. 1998): G.4-2; Henri Brun, Guy Tremblay, and Eugénie Brouillet, *Droit constitutionnel*. 5th Ed. (Montreal: Editions Yvon Blais, 2008): 371.

<sup>116</sup> Canada. Privy Council Office, *Manual of Official Procedure of the Government of Canada*, Henry F. Davis and André Millar. (Ottawa, Government of Canada, 1968) [Privy Council, *Manual*]: 77-79.

<sup>117</sup> Katherine Barber, editor *Canadian Oxford Dictionary, Second Edition* (Oxford University Press, 2004), at 986, definition 4 of 5.

<sup>118</sup> The Privy Council Office's *Guide to Canadian Ministries Since Confederation* records only one exception to this rule, the Tenth Ministry of Sir Robert Borden. Even though Borden remained in office continuously as Prime Minister from 10 October 1911 to 10 July 1920, the *Guide* records that Borden headed two distinct ministries, the Ninth from his appointment on 10 October 1911 to 12 October 1917, and the Tenth from 12 October 1917 to his resignation on 10 July 1920. PCO probably chose to break up Borden's premiership into two ministries because the Conservatives ran on a joint slate with most English-speaking Liberals in the wartime election of 1917 and governed in a coalition with them thereafter. Even PCO seems unconvinced by its own decision to list them as separate ministries instead of as one ministry which underwent a big cabinet shuffle after the election in 1917: “The Tenth Ministry was in effect a re-organization of the Ninth with the addition of a number of Liberal and Labour Ministers. In addition to Borden, it was composed of 15 Conservatives, 9 Liberals, and 1 Labour.” In all other instances (Macdonald, King, and Trudeau), a Prime Minister only led two or more ministries if he had resigned and the Governor General re-appointed him again later after some months or years in opposition. Privy Council Office, “Ninth Ministry, 10 October 1911 to 12 October 1917,” in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 15 March 2024; Privy Council Office, “Tenth Ministry, 12 October 1917 to 10 July 1920,” in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 15 March 2024.

Ministry remained in office continuously from 6 February 2006 to 4 November 2015 and spanned the 39<sup>th</sup>, 40<sup>th</sup>, and 41<sup>st</sup> Parliaments elected in 2006, 2008, and 2011, respectively.<sup>119</sup> Alternatively, a single parliament might overlap with multiple ministries. The 2<sup>nd</sup> Parliament elected from July to October 1872, for instance, included two ministries because Sir John A. Macdonald resigned over the Pacific Scandal and Governor General Lord Dufferin appointed Alexander Mackenzie as the next Prime Minister in November 1873.<sup>120</sup>

The British *Cabinet Manual* contains the same definition of ministry.<sup>121</sup> The New Zealanders likewise tie the ministry to the prime minister<sup>122</sup> while also referring to continuous stretches where one party remains in power under two or more prime ministers as the “*n*th party government.”<sup>123</sup> The period from 1980 to 1984 saw two consecutive Liberal ministries headed by Pierre Trudeau and John Turner would be called, under the New Zealand parlance, “the 7<sup>th</sup> Liberal Government,” because those years marked the seventh stint of Liberal Prime Ministers since Confederation. In contrast, the Australians reject the *Oxford* definition and tie a ministry to both the prime minister and the parliament such that no ministry can span multiple parliaments, but one parliament could still contain multiple ministries.<sup>124</sup> Under the Australian model, Stephen Harper led three consecutive ministries in three consecutive parliaments.

In Canada, the transfer of power between ministries usually takes place two to three weeks after a general election or leadership convention in the following manner:

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<sup>119</sup> Privy Council Office, “Twenty-Eighth Ministry: 6 February 2006 to 3 November 2015,” in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 15 March 2024. The Privy Council Office decided sometime after 2019 to count only the last *full* day of a ministry, but, in reality, the 28<sup>th</sup> Ministry lasted until 4 November and until a few minutes before Governor General Johnston swore in Justin Trudeau as head of the 29<sup>th</sup> Ministry.

<sup>120</sup> Privy Council Office, “First Ministry: 1 July 1867 to 5 November 1873,” in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 15 March 2024; Privy Council Office, “Second Ministry: 7 November 1873 to 8 October 1878,” in *Guide to Canadian Ministries Since Confederation* (25 September 2023), accessed 15 March 2024; O’Brien & Bosc, *supra*, note 1, at 1273.

<sup>121</sup> The United Kingdom. Cabinet Office, *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government*, 1<sup>st</sup> Edition (London: Crown Copyright, October 2011), at paragraph 2.8 & endnote 10 of chapter 2.

<sup>122</sup> New Zealand. Cabinet Office, *Cabinet Manual*, 2023 (Wellington: Department of the Prime Minister and Cabinet, 2023), at para. 6.48, and page 100.

<sup>123</sup> Martin Holland and Jonathan Boston, *The Fourth Labour Government: Politics and Policy in New Zealand* (Oxford University Press, 1990); Norton Fausto Garfield, *The Fifth National Government of New Zealand* (Anim Publishing, 2012).

<sup>124</sup> Parliament of Australia, Parliamentary Library, *Parliamentary Handbook: Ministries*, accessed 15 March 2024.

1. The incumbent Prime Minister informs the Governor General that he intends to resign based on the results of the general or leadership election and becomes the “outgoing” Prime Minister;
2. The leader of the party which won the largest number of seats, or the new leader of the incumbent party (whether an outright majority or only a plurality) becomes the “incoming” Prime Minister as the only plausible candidate;
3. Within a few days, the Governor General formally recognizes the incoming Prime Minister as the “Prime Minister-designate” and asks him to prepare to form a government;
4. The outgoing Prime Minister and Prime minister-designate agree to the exact timeline for the transition between their ministries;
5. Finally, some two to three weeks later, the Governor General formally accepts the resignation of the outgoing Prime Minister and swears in the Prime Minister-designate as Prime Minister, along with the rest of the cabinet ministers in his ministry.<sup>125</sup>

The provinces follow the same method.<sup>126</sup> The most recent transfer of power between ministries in Ottawa happened in October and November 2015. On 19 October 2015, Canadians awarded the Liberals a parliamentary majority in the 42<sup>nd</sup> Parliament; the clear results of this general election made Conservative leader Stephen Harper the outgoing prime minister and Liberal leader Justin Trudeau the incoming prime minister that same night. The following day, on 20 October 2015, Stephen Harper informed Governor General David Johnston that he intended to resign as Prime Minister of Canada; Johnston summoned Justin Trudeau later that day and recognised him as the Prime Minister-designate. Finally, on 4 November 2015, the Governor General accepted the resignation of Stephen Harper, and thus that of the 28<sup>th</sup> Ministry as a whole, and subsequently swore in Justin Trudeau as Prime Minister along with the rest of the cabinet for the 29<sup>th</sup> Ministry.<sup>127</sup>

The previous transfer of power took place in January and February 2006. On 23 January 2006, Stephen Harper’s Conservatives won only a plurality of seats. Prime Minister Paul Martin could therefore have decided to remain in office, try to win the support of the New Democrats and Bloc quebécois, and test the confidence of the new House of Commons; instead, he took to the podium to concede defeat and announced that he would resign as Prime Minister of Canada and as leader of the Liberal Party.<sup>128</sup> Consequently,

<sup>125</sup> Privy Council, *Manual*, *supra*, note 116, 83-84.

<sup>126</sup> Office of the Lieutenant Governor of Ontario, “Constitutional Procedure Regarding a Change of Premier — Background,” 25 January 2013.

<sup>127</sup> Office of the Governor General of Canada, “Swearing-In Ceremony: Governor General Presided Over the Swearing-In Ceremony of the Right Honourable Justin Trudeau, Canada’s 23<sup>rd</sup> Prime Minister, and his Cabinet,” 4 November 2015, accessed 13 March 2024; Privy Council Office, “Twenty-Ninth Ministry, 4 November 2015 to Present,” in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen’s Printer, 25 September 2023).

Stephen Harper became the incoming prime minister and delivered a victory speech that same night. Governor General Michaëlle Jean formally recognised Harper as the Prime Minister-designate three days later on 26 January 2006, and she formally accepted the resignation of Martin and the 27<sup>th</sup> Ministry and appointed Stephen Harper as Prime Minister and head of the 28<sup>th</sup> Ministry on 6 February 2006.<sup>129</sup>

This transition of two to three weeks allows the Governor General to appoint the new Prime Minister and the rest of the new ministry at the same time in one fell swoop. But prior to 1920, Canada followed the British method where the King appoints a new Prime Minister the day after the general election or a leadership election but not the rest of the ministry at the same time.<sup>130</sup> In the United Kingdom, the incumbent Prime Minister tenders his or her resignation to the King as soon as the results make clear that his or her party has lost a general election (usually the following day, though 2010 stands out as an exception here), which, in turn, allows the King to commission the leader of the party which won the most seats as the next Prime Minister right away.<sup>131</sup> Other ministers, however, might stay on for a few more days in a

<sup>128</sup> Paul Martin in *CBC Archives*, “Paul Martin Concedes Defeat, Announces Resignation,” 23 January 2006.

<sup>129</sup> Office of the Governor General of Canada, “Date for the Swearing-in of the Honourable Stephen Harper as the 22nd Prime Minister and of his Cabinet,” 26 January 2006; Privy Council Office, “Twenty-Seventh Ministry, 12 December 2003 to 5 February 2006,” in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen’s Printer, 25 September 2023); Privy Council Office, “Twenty-Eighth Ministry, 6 February 2006 to 3 November 2015,” in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen’s Printer, 25 September 2023).

<sup>130</sup> Privy Council Office, “Life of a Ministry: The Last Day,” in *Guide to Canadian Ministries Since Confederation*, 25 September 2023, accessed 13 March 2024.

<sup>131</sup> For example, Queen Elizabeth II invited Margaret Thatcher to form a government on 4 May 1979, one day after the general election held on 3 May 1979. Similarly, the Queen commissioned Tony Blair as Prime Minister on 2 May 1997, one day after the general election held on 1 May 1997. Margaret Thatcher recounts in her prime ministerial memoir that “We knew that we had won in the early hours of Friday 4 May, but it was not until the afternoon that we gained the clear majority of seats we needed — 44 as it eventually turned out.” Thatcher adds that the Palace called her around 2:45 p.m. and that the Queen asked her to form a government that same afternoon. Here Thatcher also demolishes the narrative in British Wikipedia and confirms that the British conform to the Canadian practice: “The Audience at which once receives the Queen’s authority to form a government comes to most prime ministers only once in a lifetime. The authority is unbroken when a sitting prime minister wins an election, and so it never had to be renewed throughout the years I was in office.” Margaret Thatcher, *The Downing Street Years* (Harper Collins, 1993), 17. Tony Blair also notes in his autobiography: “On 2 May 1997, I walked into Downing Street as prime minister for the first time. [...] The election night of 1 May had passed in a riot of celebration, exhilaration and expectation.” Tony Blair, *A Journey: My Political Life* (Toronto: Alfred A. Knopf), 3. Blair then recounts his first audience where the Queen asked him to form a government on pages 15-16, and he quoted the dialogue of Peter Morgan’s screenplay in the 2006 film *The Queen*.

short transition, and the King appoints new ministers on the new Prime Minister's advice.

Only in parliamentary jurisdictions which use confirmation voting (such as in the devolved assemblies in Northwest Territories, Nunavut, Scotland, and Wales; in some parliamentary republics like Germany and Israel; or in constitutional monarchies like Spain) does the Crown or President possess no discretion whatsoever in appointing a Prime Minister but instead must appoint whomever the elected assembly has nominated.<sup>132</sup> Sweden has taken confirmation voting a step farther and cut the King out of the process altogether; instead, the speaker of the lower house appoints whomever his colleagues nominate.<sup>133</sup> And in Northern Ireland, the confirmation vote itself doubles as the appointment, presumably because the Irish nationalists demanded during the negotiations over the Belfast Accords in 1998 that the Crown play no role whatsoever in the Northern Irish Assembly and Executive.<sup>134</sup> The prime minister in these jurisdictions therefore remains in office during the election and after the election until meeting the new elected assembly, which then either votes that the incumbent be re-appointed or nominates a new prime minister.<sup>135</sup>

If Canada used confirmation voting, then Turner would have been obliged to meet the House of Commons and would probably have immediately lost such a vote. But since Canada does not employ this system, Governors General have appointed three prime ministers who never faced the House of Commons at all: Sir Charles Tupper in 1896, John Turner in 1984, and Kim Campbell in 1993.<sup>136</sup> Jeanne Sauvé would never have needed to consider asking anyone other than Turner to form a ministry because the Crown, not the House of Commons, appoints Prime Ministers. In Ottawa, the ten provinces, and Yukon, the House of Commons or assembly does not nominate the Prime Minister or Premier but instead either acknowledges that it has

<sup>132</sup> *Basic Law of the Federal Republic of Germany*, Articles 63 & 69; Reuven Y. Hazan, "Analysis: Israel's New Constructive Vote of No-Confidence," *Knesset News*, 18 March 2014; *The Spanish Constitution*, Articles 62(d) & 99(1-5) (Madrid: Agemcoa Estata Boletín Oficial del Estado, accessed October 2021) at pages 22 & 31; *Scotland Act, 1998* (United Kingdom), c. 46, s. 46(1-4); *Government of Wales Act, 2006* (United Kingdom), c. 32, s.46-47; *Legislative Assembly and Executive Council Act* (Nunavut), c. 5, s. 60; *Legislative Assembly and Executive Council Act* (Northwest Territories), c. 22, s. 61(1.1);

<sup>133</sup> *The Instrument of Government, 1974: 152*, at Articles 4-6.

<sup>134</sup> *Northern Ireland Act, 1998* (United Kingdom), c. 47, s. 16A; Northern Irish Assembly, *Standing Orders*, Standing Order 44(1).

<sup>135</sup> J.W.J. Bowden, "The Origins of the Caretaker Convention: Governor General Aberdeen's Dismissal of Prime Minister Tupper in 1896," *Journal of Parliamentary and Political Law* 16, no. 2 (2022) [Bowden, Origins]: 430-434.

<sup>136</sup> Arthur Meighen in June 1926 also never met the House of Commons as Prime Minister because he had to resign and run in a ministerial by-election upon his appointment. The other three never met the House of Commons as Prime Minister either because Parliament had been dissolved (as with Tupper) or because the Commons had already adjourned itself (as with Turner and Campbell).

confidence in the ministry that the Governor had already appointed by adopting the Address-in-Reply to the Speech from the Throne, supply bill, or key government bill, or, alternatively, expresses its want of confidence and votes out the incumbent ministry. This happened in Ontario in 1985, British Columbia in 2017, and New Brunswick in 2018.<sup>137</sup>

All the Canadian precedents up to 1984 and good common sense show that even if Trudeau had appointed those additional 17 Liberal MPs to various plum posts on 29 June 1984 and reduced the Liberals to a plurality 15 short of their previous majority after the House of Commons adjourned for the summer, Governor General Sauvé would still have sent for John Turner and commissioned him as the next Prime Minister. No Canadian precedent up to that point supports the outlandish hypothetical of which Trudeau and Osbaldeston convinced Turner. The Trudeau-Osbaldeston Doctrine rests on the premise that a Governor General would not appoint a new Prime Minister of the same political party mid-parliament if the party of the outgoing Prime Minister held only a plurality of MPs. Instead, under their theory, the Governor General would only appoint the new leader of the political party already in power as the next Prime Minister if that political party held a majority of MPs. This is plainly false.

**(b) Trudeau's Appointment in 1968 Disproves the Trudeau-Osbaldeston Doctrine of 1984**

What is more, the most recent and most similar precedent available in 1984 which proves the Trudeau-Osbaldeston Doctrine false had occurred in 1968 when Governor General Roland Michener appointed none other than Pierre Trudeau himself to succeed Lester B. Pearson as Prime Minister! On 8 November 1965, Canadians elected the 27<sup>th</sup> Parliament and returned 130 Liberals, 1 Liberal-Labour, 97 Progressive Conservatives, 21 New Democrats, 9 Creditistes, 5 Social Creditists, 1 Independent Progressive Conservative, and 1 Independent, for a total of 265 MPs.<sup>138</sup> *House of Commons Procedure and Practice* records that 133 amounted to an arithmetic majority at that time and therefore indicates that the Liberals achieved only a plurality of 131 (combining the Liberals and Liberal-Labour), two short of an arithmetic majority. In practice, however, 134 constituted a true bare majority in 1965 because the Prime Minister still appointed the Speaker from amongst government backbenchers until 1985, when the Commons changed its *Standing Orders* so that MPs elect the Speaker directly by secret ballot.<sup>139</sup> In any event, the Liberals held only a plurality of MPs in a House of Commons consisting of four major parties (the Liberals, Conservatives, New Democrats, and the English and French Social Creditists combined) as well as 3 independents. The standings of the various parties fluctuated slightly over

<sup>137</sup> Bowden, *Origins*, *supra*, note 135, at 430.

<sup>138</sup> O'Brien & Bosc, *supra*, note 1, at 1277.

<sup>139</sup> O'Brien & Bosc, "Election of the Speaker as Presiding Officer," 329.



the course of the 27<sup>th</sup> Parliament, but the Liberals still only held a plurality upon its dissolution in April 1968.

Pearson announced in December 1967 that he would resign as Liberal leader and Prime Minister after a leadership convention. On 6 April 1968, the Liberals elected Pierre Elliott Trudeau as their next leader.<sup>140</sup> Governor General Michener met with Trudeau and acknowledged him as prime minister-designate on 18 April, and Government House issued the following press release:

The Right Honourable L.B. Pearson has tendered his resignation to the Governor-General as Prime Minister, which the Governor-General has indicated he will accept when Mr. Pearson's successor is ready to assume office.

Accordingly, the Honourable Pierre Trudeau, Minister of Justice and recently elected leader of the Liberal Party of Canada, has been summoned and invited by the Governor-General to form a Government, which he has undertaken to do.

Mr. Trudeau has indicated [that] he hopes to be in a position to take office on the afternoon of Monday, April 22.<sup>141</sup>

Michener then appointed Pierre Trudeau as Prime Minister along with the 20<sup>th</sup> Ministry on 20 April 1968.<sup>142</sup> The Liberals held their convention and the transition of power between Pearson and Trudeau while the House of Commons stood adjourned from 27 March to 23 April 1968.<sup>143</sup> Pierre Trudeau rose in the Commons only once as Prime Minister during the 27<sup>th</sup> Parliament, on 23 April, where he informed his colleagues that he had advised Governor General Michener to dissolve parliament and call an election for later that same day.<sup>144</sup> The House of Commons had by 23 April 1968 dwindled to 259 MPs after six resignations. Crucially, 128 Liberals faced 131 MPs in the

<sup>140</sup> O'Brien & Bosc, Appendix 6, *supra*, note 9, at 1252.

<sup>141</sup> Anthony Westell, "Winters Rejects Place in Trudeau's Cabinet, *The Globe and Mail*, 19 April 1968, at 1.

This example also indicates that the Governor General might not have formally acknowledged the incoming prime minister as prime minister-designate in the 20<sup>th</sup> century until much later than they have done in the 21<sup>st</sup> century so far. However, if anything, the longer gaps between when the Liberal Party elected Trudeau as leader in 1968 and Turner in 1984 and when Governors General acknowledged them as prime minister-designate might simply reflect that their status was never truly in doubt.

<sup>142</sup> Privy Council Office, "Twentieth Ministry, 20 April 1968 — 3 June 1979," in *Guide to Canadian Ministries Since Confederation* (Ottawa: Queen's Printer, 25 September 2023), accessed 26 February 2024 < <https://guide-ministries.canada.ca/dtail.php?lang=en&min=20&id=1> > .

<sup>143</sup> Speaker Lucien Lamoureux, "The Royal Assent," in *Debates of the House of Commons*, Volume VII, 1968, 27<sup>th</sup> Parliament, 2<sup>nd</sup> Session, 16 Elizabeth II, 27 March 1968, at 8143.

<sup>144</sup> Pierre Trudeau (Prime Minister), "Privilege: Mr. Trudeau — Acknowledgement of Congratulatory Messages," in *Debates of the House of Commons*, Volume VII, 1968, 27<sup>th</sup> Parliament, 2<sup>nd</sup> Session, 16 Elizabeth II, 23 April 1968, at 8145.

opposition when Pierre Trudeau advised Roland Michener to dissolve the 27<sup>th</sup> Parliament on 23 April 1968<sup>145</sup> — a plurality three short of a raw, arithmetic majority and four short of a practical working majority (including a Liberal Speaker). The Liberals held 49.42% of the active Commons.

No one has ever suggested that Governor General Michener should not have commissioned Pierre Trudeau to form a government on 20 April 1968 and that he should have instead called for Robert Stanfield, the Leader of the Progressive Conservative Party and of Her Majesty's Loyal Opposition. That would have been preposterous. For instance, *The Globe and Mail* noted on 20 April 1968 that Pearson had appointed External Affairs Minister Paul Martin Senior to the Senate and Solicitor General Lawrence Pennell to the Ontario Supreme Court, which left a total of six vacancies in the Commons, "five of them in Liberal-held seats."<sup>146</sup> These loses reportedly "caused concern among Liberals," not because they believed that Michener would refuse to call upon Trudeau to form a government, but because the opposition could defeat "the minority government" and force a general election "at a time less favourable than June."<sup>147</sup>

The same article noted that Stanfield described himself as "ready for an election" and that "the New Democrats have been working for some time toward a June election," which shows that the opposition parties did not contest the legitimacy of Michener's decision to commission Trudeau to form the Twentieth Ministry, nor were they planning some absurd coalition to put Stanfield in power.<sup>148</sup> *The Globe and Mail* also noted upon Trudeau's investiture that the new ministry "would be hard pressed to govern the country or face Parliament for any length of time" — meaning that only an election could break the deadlock.<sup>149</sup> Trudeau discussed the possibility of either

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<sup>145</sup> *Debates of the House of Commons*, Index, 27<sup>th</sup> Parliament, 2<sup>nd</sup> Session, 16-17 Elizabeth II, 1967-1968, "Alphabetical List of the Members of the House of Commons, Second Session — Twenty-Seventh Parliament," at pages vii-x; Library of Parliament, Parlinfo, Parliamentarians, 27<sup>th</sup> Parliament, accessed 26 February 2024 < [https://lop.parl.ca/sites/ParlInfo/default/en\\_CA/People/parliamentarians#parlinfo\\_row1](https://lop.parl.ca/sites/ParlInfo/default/en_CA/People/parliamentarians#parlinfo_row1) > . The index of the *Debates* only listed the names and ridings of each MP, so I cross-referenced that list with the data from Parlinfo, which also includes their party affiliations. I downloaded a spreadsheet in Excel and then added columns for "MP Upon Dissolution (23 April 1968)", for which I listed yes or no, and another "Liberal Upon Dissolution", also yes or no. These additions allowed me to sort the data easily along these two new columns and then use Excel to count the number of MPs who met both conditions. That total came to 128 with the addition of Joseph-Alfred Mongrain, whom Parlinfo lists as an independent in the 27<sup>th</sup> Parliament but then a Liberal in the 28<sup>th</sup> Parliament. I counted him in the Liberal list because I presumed that he would have voted for Pierre Trudeau if we used confirmation voting or if Trudeau had introduced a Throne Speech, given that he officially joined the Liberal Party during Trudeau's first election.

<sup>146</sup> Anthony Westell, "Trudeau Cabinet Decides Today: Way Clear for June 17 Vote — Martin Likely to Lead Senate," *The Globe and Mail*, 20 April 1968, at 1 & 10.

<sup>147</sup> *Ibid.*, at 10.

<sup>148</sup> *Ibid.*

continuing with the current parliament or calling an early election with the Liberal caucus on 23 April; most Liberal MPs preferred the latter.<sup>150</sup>

Finally, Trudeau issued a statement explaining why he had advised Michener to dissolve parliament and call an election. He noted that the opposition never contested the legitimacy of his becoming prime minister and indeed also welcomed fresh elections:

[. . .] one of the most important responsibilities of the Prime Minister is to decide when to seek a mandate from the people. After carefully considering the alternatives, I have decided that the voters should be consulted before the Government brings a program of new legislation before Parliament. I am pleased that the Leader of the Opposition agrees with my conclusion. Last Sunday evening on CBC television, he [Robert Stanfield] stated: "I think the sooner we have an election the better." [. . .] In the last few months, the members of both major political parties have chosen new leaders. [. . .] As it is generally agreed that an election must be held in the coming months, there is an atmosphere of uncertainty which an immediate election will dispel. [. . .].<sup>151</sup>

In other words, the Liberals in 1968 feared precisely the same scenario that Turner would probably have faced in September 1984 if he had chosen to meet the Commons for a 3<sup>rd</sup> and final session of the 32<sup>nd</sup> Parliament: the opposition could have out-voted a Liberal plurality to defeat the Address-in-Reply and forced an election on their terms. Trudeau and Pearson hastened their transfer of power by two days, from 22 to 20 April, so that Trudeau could retain the option of advising the Governor General to call an election for mid-June instead of waiting until September.<sup>152</sup> Yet Pierre Trudeau himself and Gordon Osbaldeston advanced the equally preposterous idea that Governor General Jeanne Sauvé would follow that bizarre and inexplicable course under virtually identical circumstances some sixteen years later on 30 June 1984 and call upon Brian Mulroney, to form a government instead of John Turner, whose Liberals would have held a plurality 15 short of a majority. The manner of Pierre Trudeau's appointment for his first term in 1968 disproves the argument that Pierre Trudeau and Gordon Osbaldeston successfully advanced against John Turner in 1984. Furthermore, Pierre Trudeau in his memoir from 1993 presented his becoming prime minister in 1968 as a *fait accompli* because he had won the Liberal leadership: "I thus became leader of the Liberal Party

<sup>149</sup> Geoffrey Stevens, "June Election Left in the Air, But Trudeau Cabinet in Merry Mood at Swearing-in," *The Globe and Mail*, 22 April 1968, at 8.

<sup>150</sup> Anthony Westall and Geoffrey Stevens, "Trudeau Will Hear Liberal Caucus Before Making Election Decision," *The Globe and Mail*, 23 April 1968, at 1.

<sup>151</sup> *The Globe and Mail*, Text of PM's Election Statement, 24 April 1968, at 8 (emphasis added).

<sup>152</sup> *The Ottawa Citizen*, "Swearing In: Trudeau Will Become PM at Ceremony on Monday," 18 April 1968, at 1; Greg Connolley, "Swearing In 2 Days Early," *The Ottawa Citizen*, 20 April 1968, at 1.

and, because the party was in power and Pearson was resigning, prime minister of Canada.”<sup>153</sup>

When the Commons adjourned for the summer on 29 June 1984, Trudeau had already appointed six Liberal MPs to patronage posts, and five seats remained vacant. Consequently, only 271 out of 282 MPs remained, which made a majority (plus the Speaker) 137 MPs. These 271 remaining MPs who would have returned to the Commons in the fall of 1984 included 30 New Democrats, 102 Progressive Conservatives, and 139 Liberals, which means that Trudeau had reduced the Liberal majority from 12 upon the election of the 32<sup>nd</sup> Parliament on 18 February 1980 to 2.<sup>154</sup> Turner rewarded 17 additional Liberal MPs with patronage on 3 July 1984, which would have reduced the Liberals to a plurality of 122 MPs (45.02% of the active Commons) and 15 short of a majority versus 132 Progressive Conservatives and New Democrats. In contrast, the Conservatives were 35 short of a majority.

The shortfall that Trudeau faced in 1968 is comparable to that which would have occurred in June 1984. Michener appointed Trudeau as the second Liberal Prime Minister within the same parliament in which the Liberals held only a plurality. Trudeau advised Michener within three days to dissolve a three-year-old parliament, in which the House of Commons could certainly not have supported an alternative government, because he wanted to obtain his own popular mandate. The only difference between the circumstances in 1968 and those in 1984 is that the Liberals only ever held a plurality in the 27<sup>th</sup> Parliament but originally commanded a majority in the 32<sup>nd</sup> Parliament. But that does not change the fact that both Trudeau and Turner would have been commissioned as prime minister when the Liberals held pluralities. Therefore, based on the very similar precedent from 1968 and all good common sense, the best interpretation in June 1984 was that Governor General Sauvé would have called upon John Turner to form a government on 30 June 1984 even if Trudeau had reduced the Liberals to a plurality in a four-year-old parliament without a clear alternative government.

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<sup>153</sup> Trudeau, *Memoir*, *supra*, note 56, at 88.

<sup>154</sup> O'Brien & Bosc, *supra*, note 1, at 1278; *House of Commons Debates*, 32<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, 32-33 Elizabeth II, 1984-1984, Index, “Alphabetical List of Members of the House of Commons, Showing Constituencies and Party Affiliation,” at pages xv-xvii; Library of Parliament, Parlinfo, Parliamentarians, 32<sup>nd</sup> Parliament, accessed 26 February 2024. By the 1980s, these indexes also listed the party affiliation of each MP, but I still needed to cross-reference the index with the data from Parlinfo so that I could take into account the MPs who resigned before the House of Commons adjourned for the summer on 29 June 1984. In this case, I added columns into Parlinfo’s Excel spreadsheet for “MP as of 30 June 1984”, the day on which Turner became Prime Minister and started undertaking appointments, and “Liberal as of 30 June 1984” with “yes” or “no” for each MP in both categories. I coded the Liberal MPs who resigned before 30 June as “no” not because they no longer identified as members of the Liberal Party but to reflect that they would no longer have been present in the Commons to vote for Turner if he had chosen to meet the Commons for a 3<sup>rd</sup> session in the fall of 1984.

Turner could then still have decided to advise Sauvé to dissolve Parliament and call an election in July 1984. Alternatively, Turner could have advised Sauvé to prorogue parliament on some date before 10 September 1984 (when the House resolved to end its adjournment) and open a 3<sup>rd</sup> session for Monday, 24 September. Turner would then have basked in the free good press alongside Her Majesty Queen Elizabeth II, who would originally have toured Canada from 14 to 27 July 1984,<sup>155</sup> and His Holiness Pope John Paul II, who visited Canada from 9 to 20 September.<sup>156</sup> (The election forced the Palace to postpone the royal tour until 24 September to 7 October 1984).<sup>157</sup> Turner himself would not have defended the Throne Speech in the House of Commons himself unless he had secured victory in a by-election at some point over the summer. But even if he had, Brian Mulroney's Progressive Conservatives and Ed Broadbent's New Democrats would almost certainly have rejected the Address-in-Reply, by a vote of 132 to 122, and at that point forced Turner to advise Sauvé to dissolve parliament and call a general election. This scenario seems far more plausible than the utter nonsense that Trudeau and Osbaldeston spun to Turner in June 1984.

### (c) The Caretaker Convention Goes Unmentioned

Members of the House of Commons cease to hold office upon the dissolution of parliament, but the ministry remains in office during the writ and, as the case may be, for two to three weeks after an election during the transfer of power. The Caretaker Convention means simply that the incumbent ministry should limit itself to carrying out routine and necessary public business, and should not undertake any controversial initiatives that would embarrass its successor,<sup>158</sup> after losing the confidence of the House of Commons and heading into an election (as in 1963, 1979, 2005, and 2011) or after the dissolution of parliament and issuance of the writs of election and up until the results of the election either sustain the incumbent ministry or until the Governor General appoints a new ministry a few weeks later.<sup>159</sup>

An observer from the 2020s might find most extraordinary of all that none of the news coverage in *The Globe and Mail*, *The Ottawa Citizen*, or *Maclean's*

<sup>155</sup> Wendy Warburton, "Election '84: They're Off and Running, *The Ottawa Citizen*, Tuesday, 10 July 1984, at 1.

<sup>156</sup> Canadian Conference of Catholic Bishops, "Papal Visits to Canada: Pope John-Paul II's Apostolic Visit, 1984," accessed 25 February 2024 <<https://www.cccb.ca/the-catholic-church-in-canada/papal-visits-canada/john-paul-iis-first-visit-canada/>>.

<sup>157</sup> Department of Canadian Heritage, "Monarchy and the Crown, Royal Tours, Past Royal Tours, Private and Official Tours Since 1952," 16 January 2024, accessed 25 February 2024 <<https://www.canada.ca/en/canadian-heritage/services/past-royal-tours.html>>.

<sup>158</sup> Bowden, Origins, *supra*, note 135, at 109-110.

<sup>159</sup> J.W.J. Bowden & Lyle Skinner, "'There's Nothing Strategic About This': How Dwight Ball's 'New Government' Distorted the Caretaker Convention in Newfoundland & Labrador in 2019," *Journal of Parliamentary and Political Law* 15, no. 2 (2021): 204.

ever so much as mentioned the caretaker convention (nor even referred to it by its older name of the principle of restraint) in June or July 1984.<sup>160</sup> The press instead focused on patronage, and dissatisfaction in or anger toward those appointments, or on the constitutional conventions by which Governors General appoint Prime Ministers in Canada. And the coverage centered on the political wisdom of patronage in general and on Turner's written agreement to carry out Trudeau's last round of appointments in particular, but no one — not even Brian Mulroney — questioned whether Turner had the legitimate and constitutional authority to so reward Liberal MPs. Similarly, Turner's decision to seek an election instead of meeting and demonstrating that his ministry held the confidence of the House of Commons did not in 1984 generate the same sort of discussions that such a scenario would in 2024 because no one in Canada until the late 2000s or early 2010s believed that his country should replace the Crown's authority to appoint the Prime Minister with confirmation voting and constructive non-confidence. The Crown, not the House of Commons, names the Prime Minister, and the Prime Minister's authority flows from the Governor General's invitation to form a government and head up a ministry. The ministry certainly cannot remain in office thereafter without commanding the confidence of the House of Commons. But the House of Commons either affirms or rejects the Governor General's decision and does not make that initial decision itself. All politicians, constitutional historians and lawyers, and even journalists understood these precepts in 1984, which explains why no one questioned Turner's authority to make the appointments and limited themselves to questioning the wisdom of his actions.

As David Brock and I demonstrate in our recent article in the *Saskatchewan Law Review*, the caretaker convention applied until very recently only if the ministry lost a vote of confidence in the House of Commons (like Joe Clark's on 13 December 1979), during the writ itself, and in the post-writ for the two to three weeks during which the transfer of power between ministries takes place.<sup>161</sup> Turner made his infamous nineteen appointments concurrently with advising Governor General Sauvé to dissolve parliament and issue the writs of election on 9 July 1984, so the patronage happened, for all intents and purposes, pre-writ and thus at a point where the caretaker convention or principle of restraint, as then understood, did not apply.<sup>162</sup> The caretaker convention did not expand to cover the pre-

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<sup>160</sup> Here I refer to all the newspaper stories that I have cited elsewhere in this paper.

<sup>161</sup> David M. Brock & J.W.J. Bowden, "Beyond the Writ: The Expansion of the Caretaker Convention in the Twenty-First Century," *Saskatchewan Law Review*, 87, no. 1 (2024) [Brock & Bowden, *Beyond the Writ*]: 39-87.

<sup>162</sup> I therefore find myself in the position of having to amend slightly my own recent words in the *Saskatchewan Law Review* where I suggested that the results of the election of 1984 reinforced that prime ministers who ignore the caretaker convention face political punishment. However, I should have said instead that prime ministers who engage in a flurry of gratuitous patronage face the wrath of an angry electorate, given that Turner's poor judgement did not touch upon the caretaker convention as it was understood at the time. I did not fully appreciate the complexities of this strange story

writ until the 2010s, and a consistent practice of restraint during the writ did not truly become the norm in Ottawa until after the election of 2005-2006.<sup>163</sup>

## 5. Trudeau's Motive and the Internecine Warfare in the Liberal Party of Canada

### (a) The Rivalry Between Pierre Trudeau and John Turner

Trudeau sabotaged Turner's leadership and premiership because the bad blood between them extended back to at least 9 September 1975, when Turner resigned as Minister of Finance. At the time, neither Turner nor Trudeau admitted publicly to any serious policy disagreement between them and both spoke courteously of each other, but they in fact differed in how the Government of Canada should have solved the stagflation (high inflation combined with high unemployment) of the 1970s.<sup>164</sup> During the campaign for the Liberal leadership on 10 May 1984, Turner indiscreetly told journalists when he considered himself off the record that he had resigned as Minister of Finance in 1975 because Trudeau did not support his policies. Thomas Walkom of *The Globe and Mail* reported on 11 May: "John Turner has finally shed some light on his abrupt departure from the federal Cabinet in 1975, accusing Prime Minister Pierre Trudeau of failing to support his attempts to negotiate voluntary wage curbs."<sup>165</sup> According to Canadian historian Paul Litt, "Trudeau's long-standing resentment of Turner exploded in anger."<sup>166</sup> Trudeau took the unprecedented decision to intervene in the Liberal leadership race, and his press release refuting Turner's remarks as a retroactive "misrepresentation of events" made the front page of *The Globe and Mail* on 12 May.<sup>167</sup>

On 16 June 1984, Turner won the Liberal leadership on the second ballot with 54% of the vote versus 40% for Jean Chretien in became a mere pyrrhic victory. Trudeau refused to give Turner the customary political endorsement where the outgoing and incoming leaders stand together on the stage and raise their hands in unison to symbolize continuity and cohesion; instead, Trudeau stood behind Turner and Chretien in an subtle but unmistakable gesture of disapproval.<sup>168</sup> Pierre Trudeau argued upon the publication of his memoirs in

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of why Turner believed that he had no option but to make the patronage appointments until writing this follow up article.

<sup>163</sup> Brock & Bowden, *Beyond the Writ*, *supra*, note 161, at 55-57.

<sup>164</sup> Robert Lewis & Ian Urquhart, "Canada: Moving to Correct the Drift," *Maclean's*, 6 October 1975, at 26; Ian Urquhart, "Was Turner, in Truth, Pushed?" *Maclean's*, 6 October 1975, at pages 26-28.

<sup>165</sup> Thomas Walkom, "Quit Cabinet Over Curbs: Turner," *The Globe and Mail*, 11 May 1984, at 3.

<sup>166</sup> Litt, *supra*, note 32, at 243.

<sup>167</sup> Jeffrey Simpson, "PM Attacks Turner View of Departure," *The Globe and Mail*, 12 May 1984, at 1.

<sup>168</sup> Litt, *supra*, note 32, at 249.

1993 that historians had mistakenly and “unfairly blamed” him for the patronage scandal in 1984. *The Globe and Mail* reported:

Mr. Turner was offered a simple choice: Mr. Trudeau could make the appointments himself, or Mr. Turner could do it later on his behalf, the former prime minister told a Halifax news conference. Mr. Trudeau recounted a conversation he had with Mr. Turner in June of 1984.

“I said, ‘Well, John, you’re the leader now. Do I name these 15-20 people now or do you want to do them for me after I’ve left Parliament?’ And he thought about it, and he said, ‘Well, I’ll do them for you.’”<sup>169</sup>

Trudeau does, in fact, deserve at least some blame for having first suggested to the leadership candidates at the aforesaid meeting in April 1984 that whoever succeeded him could finish making his appointments, and for having sabotaged Turner in other ways. Ironically, Trudeau devoted no space in his autobiography to the Liberal leadership convention of 1984, nor anything on the transfer of power to Turner, nor on Turner’s brief tenure as prime minister, nor even to the election of 1984. Trudeau ended the chapter “Welcome to the 1980s” with an account of his “long walk in the snow” of February 1984 and then skipped straight to “Life After Politics”.<sup>170</sup>

Jean Chretien never accepted his loss to John Turner in 1984 and spent the next few years undermining Turner until eventually capturing the Liberal leadership himself in 1990. He believed that his second-place showing at the Liberal leadership convention in 1984 entitled him to extort Turner into naming him Quebec Lieutenant over André Ouellet, the Labour Minister under Trudeau’s cabinet who strongly supported Turner.<sup>171</sup> *The Globe and Mail* reported that as late as 28 June (two days before the Governor General appointed Turner as Prime Minister), “Mr. Turner and Mr. Chretien remained locked in a stand off over the role that Mr. Chretien would play in the next federal cabinet.”<sup>172</sup> *The Globe and Mail* also reported that Turner and Chretien met for an hour on the morning of 27 June but failed to resolve their dispute about who would become the Quebec Lieutenant.<sup>173</sup> Chretien demanded that Turner make him Quebec Lieutenant; Turner refused and instead formally abolished the role altogether.<sup>174</sup>

#### **(b) Jean Chretien Similarly Undermined Paul Martin**

The rivalry between Pierre Trudeau and John Turner and that between Jean Chretien and John Turner in the 1980s carried over to Jean Chretien and

<sup>169</sup> *The Globe and Mail*, “Trudeau Denies Patronage ‘Myth,’” 19 November 1984, at A4.

<sup>170</sup> Trudeau, *Memoirs*, *supra*, note 56, at 342.

<sup>171</sup> Jeffrey Simpson, “Tough Bargaining,” *The Globe and Mail*, 21 June 1984, at 6.

<sup>172</sup> *Globe*, MacEachen, *supra*, note 12, at 1 & 5.

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*



Paul Martin from 1990 to 2003. These tensions in some ways form part of the same broader conflict within the Liberal Party between the English and right wings on the one hand and the French and left wings on the other. Chretien undermined Martin in the intra-party, mid-parliamentary transfer of power between their ministries in 2003 just as Trudeau undermined Turner throughout the leadership convention and the intra-party, mid-parliamentary transfer of power between their ministries in 1984.

Jean Chretien recounts in his political memoir that he still “intend[ed] to follow the schedule that [he] had announced in Chicoutimi and to remain prime minister until February 2004”. Otherwise, “if [he] resigned as soon as [his] successor was chosen, it would be hard for him to call an election during the depths of winter”.<sup>175</sup> Here Chretien referred to his announcement on 22 August 2002 at the Liberal parliamentary party’s retreat in Chicoutimi that he would resign as leader of the Liberal Party and Prime Minister in early 2004.<sup>176</sup> Chretien wanted to follow his original timeline and carry out his Long Goodbye before finally resigning in February 2004 because he believed that the Liberal Party would hold its leadership convention around the same time as well; however, “the Martinites had become so anxious to measure the drapes in the PMO and ride in a limousine that they got the party executive to bring the leadership convention forward to November 2003”.<sup>177</sup> According to Chretien, Martin had originally agreed to this bizarre arrangement where he would become leader of the Liberal Party in 2003 while Chretien would remain as Prime Minister until 2004 but then abruptly changed his mind. Chretien declared: “‘Okay by me. If that’s what he wants, that’s what he’ll get.’ [. . .] Not waiting until February would prove to be a fatal error in judgement on Martin’s part.”<sup>178</sup>

Paul Martin recounts the tale a bit differently in his memoir. According to Martin, he had accepted Chretien’s plan to remain as Prime Minister until February 2004 but that Chretien later altered the agreement:

Soon after I was chosen as leader, however, word reached us that the prime minister was actually planning to step down much sooner. At one time, this would have been welcome, but at this date it complicated our transition plans. We then got indication that he [Chretien] would stay on his original date only if we asked him to, something that would have seemed laughable after we had had so long to prepare for office.<sup>179</sup>

<sup>175</sup> Jean Chretien, *My Years as Prime Minister* (Toronto: Alfred A. Knopf Canada, 2007) [Chretien], 399.

<sup>176</sup> *CBC News Archives*, “Jean Chretien’s Long Goodbye,” 22 August 2002; *BBC News*, “Canada’s PM Sets Resignation Date,” 22 August 2002.

<sup>177</sup> Chretien, *supra*, note, 175, at 399.

<sup>178</sup> *Ibid.*, at 400.

<sup>179</sup> Paul Martin, *Hell or High Water: My Life In and Out of Politics* (Toronto: McClelland and Stewart Ltd, 2008), 249 (emphasis added).

Martin believes that Chretien advised Governor General Adrienne Clarkson to prorogue the previous session of parliament in November 2003 to prevent the Auditor General from tabling her report into what became the Sponsorship Scandal until after he had left office in 2004; consequently, writes an embittered Martin, Chretien deliberately sabotaged his premiership before it had begun: “the prime minister [Chretien] had already guaranteed that the report, which dealt with problems on his watch, would only be released on mine”.<sup>180</sup> Martin concludes:

The idea that having relinquished the leadership of the Liberal Party, but not yet the office of prime minister, Jean Chretien would summon Parliament into a new session in early 2004, have a throne speech, table the Auditor General’s report, take the heat that was rightfully his, and then — at that point and that point only — hand over the Prime Minister’s Office is too absurd to take seriously. The fact is Jean Chretien could easily have chosen to have the Auditor General’s report tabled and made public while he was prime minister — but he opted not to do so.<sup>181</sup>

Trudeau similarly outfoxed Turner, took advantage of his impatience to become prime minister and ignorance of constitutional conventions, and sabotaged his doomed premiership from the outset through a clever ploy and bluff. In both cases, the two sets of Liberal leaders involved loathed one another.

## 6. Conclusion: Bad Constitutional Advice Meets Poor Political Judgement

The constitutional precedents up to 1984, as well as the public statements of Ed Broadbent and Brian Mulroney, clearly pointed toward only one plausible and reasonable outcome: Governor General Jeanne Sauvé would have commissioned John Turner to form the 23<sup>rd</sup> Ministry on 30 June 1984 even if Pierre Trudeau had appointed up to 23 Liberal MPs himself and reduced the Liberals to a plurality 15 short of a majority in the House Commons. After all, Governor General Roland Michener first appointed Pierre Trudeau as Prime Minister and head of the 20<sup>th</sup> Ministry on 20 April 1968 when the Liberals only held a plurality in the House of Commons, and no one believed that he should have done otherwise. Turner simply did not understand the constitutional conventions of Responsible Government — despite having served as an MP throughout a series of minority parliaments in the 1960s and 1970s and in both Pearson’s and Trudeau’s ministries in 1968 — or else he would have summarily dismissed Trudeau’s bluff and Osbaldeston’s preposterous advice and refused to sign an obsequious secret letter pledging to finish undertaking all Trudeau’s outgoing appointments. Turner could not differentiate good and reasonable advice from wild hypothetical speculation. However, some blame also rests with Osbaldeston who should have known better. Constitutional conventions in Canada and other Commonwealth

<sup>180</sup> *Ibid.*, at 249-250.

<sup>181</sup> *Ibid.*, at 250.

Realms rely, above all, on practicality.<sup>182</sup> And the “extreme case” that Osbaldeston raised was, quite simply, impractical and so improbable that it did not merit mention apart from in a footnote because neither Brian Mulroney nor Ed Broadbent had ever made any public statements which made the extreme case the least bit plausible. Osbaldeston failed as the Clerk of the Privy Council to provide John Turner sensible and reasonable constitutional advice and muddled the entire purpose of the constitutional conventions by which Governors General appoint Prime Ministers with the most preposterous hypothetical. He led Turner astray.

Yet Turner’s poor judgement in trusting Trudeau’s musings and Osbaldeston’s official advice somehow fit with his other stumbles and mistakes throughout 1984. Turner came across as a paradoxically stilted yet overly presumptuous Don Draper-like timecapsule of the early 1960s. He infamously justified calling grown women “girls” and condescendingly patting their posteriors, saying: “I’m a tactile politician.”<sup>183</sup> He even boldly told reporters: “I don’t think that they [women] find it [being patted on the behind] offensive at all”<sup>184</sup> and doubled-down on his *Mad Men* method during the English-language leaders’ debate, referring to touching women’s posteriors as “a mark of friendship” and a gesture “which meant no disrespect”.<sup>185</sup> Even in the 1980s, Turner’s jocular persona struck most voters as an off-putting relic of the social mores from some twenty years earlier. Turner’s awkward anachronistic performance throughout 1984 revealed a painful truth: he had failed to live up to his own myth.

The Canadian media had tried to portray John Turner as early as 1962 as “Canada’s [Jack] Kennedy”: a well-educated, handsome former Rhodes Scholar who danced with Princess Margaret and added both a touch of glamour and romanticism to the dreary tedium of Mackenzie King, Louis St. Laurent, and Lester Pearson as well as a steady hand in contrast to the erratic and mercurial John Diefenbaker;<sup>186</sup> in reality, Pierre Trudeau had stolen that mantle from Turner by 1968, and Turner simply could not live up to his own false image. Turner seemed oblivious to something as simple as how the public perceived his boorish and presumptuous tactility — and ironic lack of tact. He has gone down in Canadian political history as a caricature and the victim of the greatest exchange in any leaders’ debate, as well as one of the many politicians (along with Joe Clark, Kim Campbell, Paul Martin, and Gordon Brown) who seemed better at being a cabinet minister than prime minister.

Turner’s confounding ignorance toward the constitutional conventions of Responsible Government and astounding gullibility to Trudeau’s bluff and Osbaldeston’s corroborating wild speculation sabotaged his premiership, and he turned himself into the patronage patsy. This merits some historical

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<sup>182</sup> Bowden, *Origins*, *supra*, note 135, at 439-443.

<sup>183</sup> *CBC Archives*, “‘A Very Tactile Politician’,” 13 July 1984.

<sup>184</sup> *Ibid.*

<sup>185</sup> Turner, *Leaders’ Debate*, *supra*, note 69, at 28:29.

<sup>186</sup> *CBC Archives*, “Canada’s Kennedy,” 1962.

recognition as well, if only as a cautionary tale and frame of reference to explain the true constitutional conventions by which Governors General appoint Prime Ministers in Canada. This bizarre and obscure precedent should stand alongside the Double Shuffle of 1858, Macdonald's tactical prorogation of 1873, Aberdeen's dismissal of Tupper in 1896, Minto's near-dismissal of Laurier in 1900, the King-Byng Thing of 1926 (which continues to resonate a century later because perhaps it rhymes), and the tactical prorogations of Chretien in 2003, Harper in 2008 and 2009, and Trudeau in 2020, all of which reveal the boundaries of the Prime Minister's authority and the Governor General's discretion.