The Constitutional and Political Aspects of the Office of the Governor General

by Edward McWhinney QC

On December 4, 2008, Governor General Michäelle Jean met with Prime Minister Stephen Harper at his request. The Governor General had broken off a State visit to three central European countries and returned to Ottawa the previous day to meet with the Prime Minister. The meeting was held in private and, in accord with long-standing practice, without any official minutes of the meeting. The Governor General granted the Prime Minister's request for an immediate Prorogation of Parliament, with the House of Commons, as had been indicated publicly by the Prime Minister, to resume on January 26, 2009. These events raised a number of questions about the role of the Governor General which are explored in this article.

The office of Governor General is part of the historically "received" (British) constitutional heritage in Canada–what today is referred to as a Westminster-model constitution with its dualist executive system (titular head-of-state, and head of government). Its best surviving historical examples, apart from Great Britain itself, are in the "old" Dominions – Canada and Australia. It is replicated also, and continues to operate with a certain imaginative flair and capacity for pragmatic innovation in some former or present members of the Commonwealth, like Ireland and India, where after serious studies of the U.S. and Continental European models, it was chosen freely to adopt it, in preference to those other executive paradigm-models.

Edward McWhinney, a former MP and author of the recently published, "The Governor General and the Prime Ministers. The Making and Unmaking of Governments", (2005), has lectured and advised on Canadian, and also Commonwealth Law and Conventions of the Constitution over a number of decades. A complete bibliography of his earlier published books and articles in this field may be found under his name at www.parl.gc.ca/common/index.asp?

The bulk of the law governing the conduct of the Governor General of Canada is not to be found in the original *British North America Act* of 1867 (renamed in 1982 as the *Constitution Act),* but in the un-codified institutional practice of Great Britain going back a number of centuries, the so-called Conventions of the Constitution. This may be supplemented today by reference to practice in other, cognate Commonwealth countries that retain the Westminster paradigm model but that have had much more occasion than Great Britain or for that matter Canada in the often trial-and-error testing involved adapting old, even antique constitutional forms and processes to the rather different societal conditions and needs of today's society. It would have been possible, and no doubt sensible, to have attempted over all the years since 1867 and especially after the adoption of the *Statute of Westminster* in 1931, to codify the Office of Governor General and to try to establish the possibilities and also prudent limits of the discretionary powers of the Governor General, particularly in relation to the granting, or withholding, or later withdrawal of the mandate to form a government – the making and unmaking of governments. Certain continental European countries,

with different legal-historical roots than Westminster, but with a not dissimilar dualist executive system, have done that in their new post-World War II constitutional systems, with some evident public success in reducing the risks of accusations of politically partisan decisions being directed against the head-of-state. The failure to act in Canada stems in part from that political inanition that one finds in countries that have no immediate major political, social, or economic crisis of the sort that generates public demand for fundamental constitutional change or even a new constitution. The few examples in Canada of *ad hoc* constitutional change in recent years, like the Fixed Elections date amendment to the *Canada Elections Act*, adopted in 2007,[1] have sometimes been misunderstood, as to their intent and purpose, notwithstanding their very clear and explicit statutory draftings. The 2007 amendment does not in fact provide any extra constitutional empowerment to the Governor General, whose Prerogative, discretionary powers, (such as they may be today, but including the power to dissolve Parliament), are expressly "saved" by the legislation.

One suggested way of at least politically if not also legally empowering the Governor General has been to have the office given the extra legitimacy, by having some system of election, direct or indirect, to it. Until the *Statute of Westminster* in 1931, the Governor General remained an Imperial Official, chosen by the British Government and responsible to it. In 1916, Conservative Prime Minister, Sir Robert Borden, strongly protested Whitehall's choice of the successor to the Duke of Connaught, without any prior consultation with Ottawa. Thereafter, beginning with the next appointment, a process of confidential consultation with Ottawa had emerged. By the 1930s, post-Statute of Westminster, the choice of the Governor General seems effectively to have been made by Ottawa; and since the 1950s, both the process and also the actual choice have become wholly Canadian (save for the formal appointment, after the event, by the Queen). (In 1930, King George V had attempted to veto the Australian choice of the first Australian national as Governor General, but the Labour Prime Minister of Australia of the day had resisted and the King desisted). There has been no turning back from that political reality since that time.

Would local election of the Governor General make a difference? The examples cited from outside Canada reflect, too often, their own special societal facts and the political culture going with that. Ireland has been the most open and democratic, with a nation-wide popular election to choose the head-of-state; but the Irish, perhaps because of the example set by the very early incumbents–De Valera, for example, who held the office for two full mandates, on into his early 90s–have shown exemplary self-restraint in exercise of their part codified/part Conventional powers by the head-of-state. The last two Irish Presidents Mary Robinson and Mary McAleese, have been distinguished jurists in their own right and women, the latter, the present incumbent, having been re-elected unopposed for a second mandate. In India, the President is elected by a more complicated regional, indirect system and has, with the recurring multi-party, no-clear-majority election results of recent decades, often been pro-active in exercising the office's discretionary powers, but this without any apparent sense of self-aggrandisement or subsequent popular complaint.

In Canada, the effective Canadianisation of the office, in symbolic terms at least, with Vincent Massey's selection, and the absence of any real opportunity or occasion, since the King-Byng crisis in 1926, of using or abusing the residual Prerogative powers, has facilitated a change in the personality and character of the appointee chosen by the federal government,–away from military men and jurists as in yesteryear, to someone (male or female) who might today be seen to reflect the new plural-culturalism of Canadian society. Incidentally, the succession in Ireland in the most recent years, of two well-respected and well-liked women, and also the Canadian experience with our second and third woman heads-of-state have been noted elsewhere in the Commonwealth and apparently influenced in Australia the recent choice of the first woman Governor General.

There has been an element of informal, direct personal exchange of views among present and former Commonwealth countries' heads-of-state, as to what to do or what not to do in the most politically difficult burden of the head-of-state office under the Westminster-model constitution–the making and un-making of governments through the granting, or withholding, or termination of the mandate to form a government. This operates as a sort of "invisible college" of practising constitutionalists–some of whom, as in Ireland and occasionally in Canada, have been jurists, but many of whom, in contrast, have been trained for totally different professions or vocations. The common element is the testing under fire of the head-of-state in concrete problem-situations with high political undertones. It is said that even the Queen, in the casual opportunities afforded by the Royal Weddings or similar ceremonial gatherings, has sometimes shared her own practical wisdom, as derived from almost six decades of contact with twelve different Prime Ministers of widely different parties,

beginning with Winston Churchill. The advantages of longevity which lifetime tenure confers in the case of the Queen are considerable in relation to other heads-of-state, appointed or elected, who will themselves serve only for five or six years in office.

The Constitutional-legal Parameter of the December 4, 2008 meetings

The rapid flow of events in Ottawa in the last days of November and the first days of December, 2008, played out in the corridors of the House of Commons but increasingly to the media and the public, had two distinct elements–the one constitutional-legal in the strict sense, the other constitutional-political. The first, the constitutional-legal was able, more easily and more quickly, to be established and defined; and, once that had been done, paradoxically the constitutional-political aspects seemed to collapse suddenly of their own accord.

The December 4, 2008, closed, bilateral meeting between Prime Minister Harper and Governor General Jean began, and also effectively ended (qua formal constitutional conference between head-of-state and head-of-government), with the single issue of Prorogation of Parliament, the granting of which brought to an end sittings of both Houses of Parliament and, as part of the process, automatically terminated all business currently before those Houses.

Prorogation as legal term-of-art but also as technical, procedural law institution is part of the English historical inheritance "received" in Canada at the time of the first English settlements. It has quite ancient roots going far back, in English legal history, to mediaeval times and the constitutional balance first effectively struck between and the King and the Barons in the Magna Carta. Continuing to evolve thereafter, in trial-and-error testing and development in the enduring power contest between the Crown and the early Parliaments over the succeeding centuries, Prorogation is extensively covered in the authoritative early commentaries, particularly from the late 15th century on when the century-long War of the Roses was finally coming to its close under Edward IV and his successor, Richard III. Under Henry VII, the first Tudor monarch, more representative Parliamentary assemblies began to emerge and, at the same time, the patterns of the more modern, centralised government authority of Tudor England. The central feature of what may be described as the post-mediaeval practice Prorogation was that it became a powerful weapon to be used by the King against the Parliaments: these were called into session to approve the tax revenues exacted for purposes of the King's foreign wars; but were then promptly prorogued because the King had no necessity, once Prorogation had occurred, to go back to Parliament and to have, then, to justify ways in which the monies were spent and results obtained from those wars.

By the 17th century, with the transition from the Tudors to the Stuarts, Prorogation seemed to become a convenient legal device for bringing to an end otherwise interminable Parliamentary sessions. The Long Parliament, first convened in 1641 under Charles I, had in the words of an eminent 18th century commentator, Priestley, chosen to make itself "perpetual", in claimed reliance on the Sovereignty of Parliament; and in fact it managed to stagger on through the ensuing Civil War and the Protectorate, to the eventual Restoration under Charles II in 1660; and then to be succeeded by a Restoration Parliament that bid almost to surpass it in terms of longevity. With the Glorious Revolution of 1688, the Parliamentary longevity problem was thought to have been disposed of by general Act of Parliament under William and Mary, the *Triennial Act* of 1694, limiting Parliamentary terms, henceforth, to a maximum of three years. In 1716, however, under the first of the Hanoverian kings, the King's Ministers, fearing that any early appeal to the electorate of the times might prove politically disastrous to the unpopular new German succession, peremptorily extended the legal duration of Parliament, not merely for the future but also specifically Parliament's currently existing term, from three to seven years; and so it remained until the comprehensive reforms under Prime Minister Asquith's *Parliament Act* of 1911 which included provision to reduce the seven year ceiling to five years.

From the early 18th century legislative reforms onwards, however, Prorogation had begun to acquire a routine character, with a Ministry requesting and receiving the grant, on its own demand, as a generally perceived and practised, non-discretionary function of the King. It did become customary to indicate, in the grant instrument itself, a time duration for the closing down of both Houses of Parliament in this way; but this was attenuated, in its practical consequences, by a further developed practice, on the call of the Ministry in power at the time, to postpone or otherwise vary or modify, by a further Ministerial decree, the date originally fixed in the original grant of Prorogation for the recall of Parliament. The perfunctory, routine, non-discretionary character of the grant of Prorogation at the request of the head-of-government is amply evidenced in the developed practice of "old" and "new" Empire or Commonwealth countries operating under Westminster-model constitutional systems.

It is, it may be suggested, within the plenary powers of the Canadian Parliament today, under the *Constitution Act* of 1982 and its Part V Procedure for Amendment of the Constitution, section 44, to legislate to vary or even abolish Prorogation, and certainly to legislate to establish constitutional-legal conditions as to its grant (including time duration), and as to any subsequent extension or suspension by the government after the initial grant. That it has not been attempted by the Canadian Parliament over the years suggests that successive federal governments of different political parties have been aware of the practical political advantages in the more effective control of their own Parliamentary agenda that can be achieved by Prorogation. This is in marked contrast to the alternative, much simpler and uncomplicated procedure of Adjournment, which affects only the one House and brings its session to an end without terminating legislative measures before the House at the time of the Adjournment.

On all the constitutional precedents–the old, historical, "received" English practice, and also the more contemporary, present or former Commonwealth, Westminster-model practice–it may be suggested that the Governor General acted fully within her constitutional-legal powers in granting Prorogation at request of the Prime Minister, at their December 4, 2008, constitutional conference. Although it would not, on the legal precedents, have been a necessary requirement or condition to the grant of Prorogation that a time limit should be included in the grant, it was a matter of public record, of which the Governor General, in exercise of her powers might properly take her own judicial notice, that the Prime Minister had publicly undertaken to recall Parliament on January 26, 2009, if Prorogation should be granted as requested by him. This would amount effectively to a time duration for the Prorogation of just over seven weeks, corresponding very nearly to the traditional Parliamentary practice in Ottawa over the years, of taking a Christmas-New Year break, from early or mid-December on and ending with the return of Parliament in late January of the following year.

The Political Parameter of December 4 Meeting

It is a canon of prudence, in constitutional problem-solving not less than in military operations, to apply economy in the use of power: to opt, wherever possible, for the lesser legal remedies not involving escalation to more fundamental issues involving possible confrontation with other, coordinate institutions of the same governmental system. Once the issue raised by the Prime Minister at the opening of his December 4, 2008, constitutional conference with the Governor General–namely, Prorogation of Parliament–had been resolved with the grant of the writ of Prorogation, it would have become constitutionally otiose and unnecessary to go on to other possible issues that might involve a direct canvassing of the Reserve, Prerogative powers of the Crown to the extent that they might have been "received" in Canada before 1867 and incorporated in the *British North America Act* of that year, and, more importantly, to the extent that, (since largely Conventional in character and never codified), they might have become constitutionally spent or eroded with the century and a half passage of time since 1867 or otherwise adapted to the needs and expectations of contemporary Canadian society. It would, it may be suggested, be putting too great a trust for salvation (constitutional-legal or political), in the Governor General to expect an incumbent to venture gratuitously into the difficult and dangerous, gray areas on the example of Governor General Lord Byng in 1926; or, of the even more striking case of Governor General Sir John Kerr in the Australian confrontation of 1975 between head-of-state and head-of-government.

The Governor General of Canada today is not King George III and cannot constitutionally deal directly with Opposition parties except through, and with a by-your-leave of, the Prime Minister of the day. There is no such thing constitutionally as a "King's Party" or "government-in-waiting" in the Opposition parties, ready and willing to take over the reins of government on call from above. An attempt, in 2005, by the then Leader of the Opposition (Stephen Harper) in conjunction with the leaders of the other two Opposition parties Jack Layton and Gilles Duceppe), to persuade the then Governor General, Adrienne Clarkson, as to their readiness to take over the government was dismissed at the time in a coolly-considered and carefully studied vice-regal rebuke. (The letter from the then Troika of Opposition leaders was relegated to the formality of a bare, two-line acknowledgement by an official on the Governor General's administrative staff. As an incidental Comity, Protocol issue, the text of the then joint letter addressed to the Governor General by the Opposition party leaders, had been released by them to the media at a press conference, one day before it had been communicated to the Governor General at Rideau Hall).[2]

The Proposed Coalition

We pass on now to what, after the grant of Prorogation, had become in constitutional-legal terms a hypothetical, purely academic matter, the issue of the how, when, and why of any "alternative government". On

this, however, there was, at all times and on an easily accessible basis as possible paradigm-model, a made-in-Canada precedent of still recent times and one which was certainly within the knowledge of several at least of the key Opposition political players involved in the attempted direct bid to Governor General Jean in late November/early December 2008. This was, of course, the Ontario precedent of 1985. The then Ontario Lieutenant Governor, John Black Aird had, in 1985, entrusted the then Leader of the Opposition in the Ontario legislature, David Peterson, with the mandate to form a new (minority) government, on the basis of the guaranteed support of the leader of the third party in the Ontario Provincial House, the NDP's Bob Rae, whose party's elected Members of the legislature, when added to those of Mr. Peterson, would amount to a numerical majority in that House.

Lieutenant Governor Aird had been part of a closed seminar, bringing together the ten Provincial Lieutenant Governors on the invitation of the then Governor General, Edward Schreyer, and held in Victoria, B.C., in early 1982. The subject for discussion was the contemporary state of the Reserve, Prerogative powers of the Crown and the extent to which they might still exist at that time in Canada, at the federal and also the Provincial levels. In the formal presentation and also in the questions-and-answers discussion that followed, there was examination of then recent constitutional practice involving the head-of-state (President) of the Republic of India, a former part of the British Raj which, as noted above had opted freely, after independence, to adopt a Westminster-model dual executive (titular head-of-state, head of government).

For the first few decades under the new Republican constitution, India had had a succession of strong majority governments, under its charismatic first Prime Minister, Jawaharlal Nehru and then, briefly, under other family members. But as the Nehru dynasty faded, a new situation emerged by the 1970s of frequent minority government resting, for survival in the Indian Parliament, on the support of smaller parties in the House that were themselves based on differing political philosophies or differing social-sectional criteria. In the 1970s, the President (whose own claims to political and constitutional legitimacy would have an extra warrant in the fact of his being elected for the office, albeit indirectly), began to essay a more pro-active rôle in order better to fulfil his prime constitutional obligation to ensure a stable government able to command the support of the House for a sufficient, continuing period. To ensure, however, that his own actual exercise of any constitutional discretionary powers would be seen to be fully transparent and also objectively verifiable as to the absence of any in-built political bias, the President began to require that concerned political parties or groups in the House involved in any potential majority coalition or alliance in the House should put forward to him their proffered guarantees of support for any proposed new government and Prime Minister in clear and unequivocal terms, confirmed in writing to him. The practice, eminently sensible as it appeared then, would continue with successor Presidents, according as later, no-clear-majority Houses recurred from time to time. The evident success of this developed practice in India, in producing stable government out of a plurality of smaller parties or sectional groups in the legislature, has perhaps been helped by the fact that party or sectional representation in the Indian House seems to turn rather more on long-range policy and issues commitment than may always be the case in other Westminster-model systems.

Lieutenant Governor Aird of Ontario, as a federal government direct appointee, and also, in accord with fairly standard political practice of the time, someone who had been a principal fund-raiser for his own Party in his Province, was also a very good and respected lawyer and one who understood the need for transparency in his decisions so that they should be seen and accepted by the public as free from casual Party political bias or influence. It may be reasonable to assume that Lieutenant Governor Aird was influenced by the recent Indian practice on which he was, in fact, personally, well informed at the time. In fact, in his 1985 precedent-making decision, Lieutenant Governor Aird went well beyond the more informal Indian safeguards on good faith as expressed in writing, in insisting upon iron-clad advance guarantees, in writing, that provided not merely the numbers necessary to make up a clear voting majority in the House, but that also amounted to a covenant, in depth and in unusual detail and length, for a concrete agenda of common political, social and economic programmes to be pursued by all the member-units of any new *ad hoc* House alliance that the Lieutenant Governor might then decide to mandate to form a new government. A very precise and extended (two-year) time duration for that de facto alliance was specifically included in the covenant. The 1985 agreement was published, in full, in the *Toronto Star* and the *Globe and Mail* of the day,[3] and was co-signed by the then Ontario Leader of the Opposition, David Peterson, and by the leader of the NDP party in the Ontario House, Bob Rae.

Neither in the corridors of the House of Commons nor in the media in Ottawa in late November and early

December, 2008, was there any apparent desire to invoke the 1985 Ontario precedent as a sensible model for the then publicly proclaimed (Troika) association of the three Opposition parties in the federal House of Commons. Instead of a single covenant, as in Ontario in 1985, that itself committed a numerical majority of members in the House to a common programme, there were, in the Ottawa scenario in late 2008, two separate documents: the first, a formal House voting-alliance that was between two of the three Opposition parties only and that, in numbers of MPs, fell far short of a numerical majority of MPs in the House; and the second, a statement by the leader of the third Opposition party which would then have to be annexed to the first document that had been signed by the other two leaders only.

It is, however, on the specifics of the commitment to concrete political, social, and economic programmes in the legislative agenda of the House of Commons under any possible Troika-association government that the gap between the 1985 Ontario precedent and the form of paper documentation that was offered in 2008 becomes patent: the 2008 exercise is vague and general in content in the two-party-only, signed document, and is lacking in substantive legislative detail. In technical, drafting terms this can serve as a useful device for trying to reconcile the irreconcilable; but while it seems to have been enough, politically, to have brought in two of the three partners in 2008, it was evidently not enough to satisfy the third party and may explain that third party's refusal to sign on also to that bilateral, two-party association agreement and to limit itself, instead, to its own, rather more open-ended averment of support. Should it be enough, however, to persuade a Governor General, in constitutional terms, that a viable new, plural-political grouping in the House,–having a long-term basis and commanding a firm majority at all times in the House, could be expected to emerge from it all and, in fulfilment of the Governor General's prime constitutional obligation, provide stable, continuing government on a long-term basis?

The Prudent Limits of Constitutional-legal Expert Opinion

The late November/early December, 2008, short-lived political storm in Ottawa was not, it may be suggested, a constitutional crisis *stricto sensu*, but an attempted political coup in Parliament with some limiting constitutional-legal parameters that, in the end-result, seem to have been enough, by themselves, to have disposed of the principal, moving political players. It should make the Governor General's constitutional rôle easier to explain and to defend, of course, so long as those limiting legal "rules of the game" are clearly understood and observed. The rôle of the Governor General's legal advisers, (necessarily *ad hoc*, since not provided for in the official civil service establishment, and also, by custom and convention, un–salaried and maintaining confidentiality as to any advice rendered), is to state what is clear and unequivocal in the historically "received" English practice today and therefore to be followed, and what is not. The latter is the grey area where "old" law and practice, conceived and operated in some bygone era, may run seriously counter to contemporary societal conditions and needs and also to what, in a larger community sense today, may be considered as fair and reasonable or as ordinary common-sense. It is at this point that the constitutional adviser's rôle, qua expert, properly ceases since by definition beyond his or her strict professional competence and expertise; and that the Governor General must, in default, take over. In the November/December 2008 problem-situation, the constitutional adviser could properly assert, on the plethora of ancient and more recent precedents available from classical English legal history and from modern Commonwealth, Westminster-style executive practice, that the grant of Prorogation is non-discretionary and to be awarded on the advice of the Prime Minister. In the follow-up step to that, the constitutional adviser might also properly suggest that the business agenda of the December 4, 2008 bilateral (head-of-state, head of government) constitutional conference had been completed and the meeting adjourned once the Prorogation writ had been granted.

On the particular question (that had become hypothetical in constitutional-legal terms on the basis of the prior, Prorogation decision), of the "alternative government" claims of the three Opposition parties' leaders, the answer would appear meta-legal in character, since resting in the end on a high political judgment of whether the Troika would be capable of standing together in a united front for a sufficient length of time necessary to vindicate the Governor General's action as being in fulfilment of the constitutional obligation, going with the office of Governor General, of providing stable and continuing government for the nation at all times. One could always call in a politicologue or consult the public opinion polls, but, in the end, a Governor General (who does not and should not need to be a constitutional lawyer), will be left to apply his or her own ordinary common-sense judgments on the facts and on the political players involved, and to decide accordingly. In the end, it is the Governor General who will be held politically

responsible for what could be judged by the general public as a "wrong" decision, with the price to pay possible premature retirement or non-extension of office and any incidental public obloquy.

Some further points that bear on this non-expert area of the constitutional discretionary process:

First, English constitutional practice, since the passage of the Second (Disraeli) Reform Bill in 1867, with its substantial opening up then of the electoral rolls on a more genuinely inclusive, representative basis, has been unbroken in always allowing a Prime Minister, defeated in the House on the Budget or similar, deemed grave issue, to ask for, and to receive on request, a Dissolution of Parliament from the head-of-state. The pragmatic conclusion seems clear in this wealth of historical practice since 1867: let the people–the electorate–decide in new general elections, as the ultimate constitutional test in a democratic polity.

Second, in English constitutional practice from the 1920s on, not every defeat of a Government in the House is to be considered as a "Confidence question" requiring the Government to tender its resignation or to ask for, and to receive, a Dissolution. This, for the time innovatory and pragmatic, rule of practice emerged under the first Ramsay MacDonald minority Labour Government of 1923-4, with the Government being defeated no less than 14 times in the House. However, the Prime Minister (who had announced, on his first taking office, that he alone could and would determine whether any defeat would warrant his going to the King) did not feel it necessary to do anything more about it. On this example, there would have been no constitutional obligation on the Prime Minister of Canada, on any defeat in the House on his economic policy measure of November, 2008, to go to the Governor General and to request a Dissolution; and, correlatively, it might be suggested, no obligation on the Governor General to grant a Dissolution in that case. (Consistently with this proposition, however, the Governor General, in any refusal to grant a Dissolution, would have been limited to asking the Prime Minister to continue in office notwithstanding any possible negative vote in the House. The Governor General could not, unless the Prime Minister then offered his own resignation, properly consider withdrawing his mandate to govern).

Third, the request, and the grant, of Prorogation at the December 4, 2008, bilateral, head-of-state/head-of-government conference amounts, on its own particular facts, to a form of conventional/constitutional precedent for the future; one might reasonably expect that any future Prorogation could have a determinate time limit attached to it, with reasonable controls, also, over any subsequent moves by a Government to vary or postpone or annul time limits as set out in the instrument of grant of Prorogation.

Fourth, in the same line of reasoning, the suddenly announced resignation of the then Liberal Prime Minister, Paul Martin in January, 2006, on the very evening of the general elections that had posted serious losses of seats for his Party, effectively eliminated any question of the Liberal government's first going to Parliament and testing the political waters as to some possible new post-Election government in coalition with one or more of the Opposition parties, before resigning as the government. The Governor General might in the future wish to consider, as in the case of Prorogation, the establishment of an early time limit for recall of Parliament after any general elections. Questions of the sort raised by the three Opposition parties' leaders in late November, 2008, as to the merits of considering options for an "alternative government" in no-clear-majority situations following on general elections, could then be tested in the new House and decided by the new House at that time.

Notes

1. Fixed Elections and the Governor General's Power to Grant Dissolution," *Canadian Parliamentary Review,* Spring 2008, p. 21. See also the critique by Adam Dodek, "Fixing Our Fixed Election Date Legislation", *Canadian Parliamentary Review*, Spring 2009, p. 18.
2. *The Governor General and the Prime Ministers. The Making and Unmaking of Governments* (2005), pp. 107, 180 fn. 6.
3. *The Toronto Star*, Saturday, June 1, 1985; and see also *The Toronto Star*, Editorial, May 29, 1985; *The Globe and Mail*, Toronto, May 29, 1985.