Democracy in Alberta: Perspectives on the Role of the Government Caucus

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Debate in the Alberta legislature over Bill 48, the *Crown's Right Against Recovery Act*,[2] has raised questions about parliamentary democracy in Alberta.

On May 25, 2009, Liberal Justice Critic Kent Hehr questioned the Minster of Health, Ron Liepert, about a lack of consultation with the medical community on provisions that would let the government sue convicted criminals for the health care costs of their crimes.[3] In response Liepert said:

> *Mr. Speaker, in our particular caucus we have 72 members. When a department proposes a change in policy, we take it to caucus. Caucus is responsible for ensuring that their constituents are supportive of what we are proposing. That's the process we have always followed and will continue to follow.[4]*

The Government Caucus and Democratic Discourse

Responsible and representative government is fundamental to Canadian democracy.[5] Members of the various houses are elected to represent the views and the needs of Canadian citizens in the legislature; to be the democratic voice of the people.[6]

In public debate over Bill 44, the controversial *Human Rights, Citizenship and Multiculturalism Amendment Act*, Premier Ed Stelmach and other ministers have emphasized the role of the Conservative caucus in legislative development. In a statement to the press about Bill 44, Stelmach said: "the bill reflects a good discussion in caucus."[7] In discussions over the same bill, the Minister of Culture and Community Spirit, Lindsay Blackett, said: "The rule of the caucus is the rule of the day."[8]

Caucus, the meeting of all the members of a political party sitting in the legislature, is an integral part of the parliamentary system of government. Caucus defines the policy agenda of the party in the legislature; the government caucus can determine the agenda of the entire government.[9] However, caucus meetings are traditionally secret, held away from political adversaries and the media. [10] Discussions in caucus meetings are not disclosed to the public. It is in caucus that legislators "make the views of their constituents known, set parliamentary strategy and decide party policy."[11] Caucus meetings allow

legislators to convey their constituents' views and needs to the caucus at large, so those views and needs can be integrated into government policy.

Some observers suggest that Premier Stelmach's leadership is focused more on the internal politics of the Conservative party than on the interests or wishes of Albertans at large.[12] When a party has a large majority of seats in the legislature, it can claim a strong popular mandate. However, a strong mandate may leave the government caucus struggling with transparency and democratic responsiveness, as was experienced by Frank McKenna's Liberals in New Brunswick and Gordon Campbell's Liberals in British Columbia.[13]

The constitutional principle of responsible government requires cabinet ministers be held accountable to the legislature for their actions and for the actions or omissions of their departments. Indeed, the legislature provides an important political and governmental forum. This is part of a process one might refer to as "deliberative democracy." This process emphasizes the communicative and deliberative elements of the democratic process. The deliberative elements of democracy are most strongly reflected by the legislature "conducting its business in a manner that gives all citizens a sense that their views and interests were taken into account in its decisions." Such a process enables the public to be involved and invested in the processes of government. [14]

Like Stelmach, premiers Campbell and McKenna struggled with the balance between caucus and the legislature, given that their caucuses made up the vast majority of the legislature. Nevertheless, secret caucus meetings are not the same as legislative debate. Legislative debate is public, it is recorded in Hansard and it is available to the public. The media can write freely about what is said in the legislature and who says it. Secret caucus meetings cannot replace the open and transparent democracy of a legislative debate.

Democracy in Canada and Alberta

According to the preamble to the *Constitution Act, 1867*, Canada's constitution is to be "similar in principle to that of the United Kingdom." The Supreme Court of Canada has interpreted this language to include representative and constitutional democracy.[15] Indeed, the Court has interpreted democracy to be "a fundamental value in our constitutional law and political culture … the sense of the supremacy of the sovereign will of a people."[16]

The concentration of power, especially in the office of the premier or prime minister, presents a "real and present danger to the democratic capacity of parliamentary governments."[17] Caucus-based democracy, however vigorous, cannot make up for a shift in power from the legislature toward the cabinet and the premier. Legislative debate is public, so it is democratic in a way that closed caucus meetings can never be, even when all the people in the meeting are

democratically elected.

Hehr's objections to the Conservative government's lack of consultation point to deeper issues.[18] Public consultation is rooted in responsible government. The Stelmach government's limited external consultation over Bill 44 may have contributed to opposition from parents' groups, teachers' associations, and civil liberties associations.[19] There have been similar concerns about a lack of consultation with healthcare associations over Bill 48 and Bill 46, the *Gunshot and Stab Wound Mandatory Disclosure Act*,[20] which makes it mandatory for healthcare professionals to report to police when they treat someone with the gunshot or stab wound.

Question period is integral to deliberative democracy. The purpose of question period is to "seek information from ministers and call the government to account for its actions."[21] It is the role of the opposition to question the government, its decisions and its policy. Liepert's response to Hehr's question hints at a troubling willingness to treat question period as unnecessary for Albertan democracy.

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[2] 2nd Sess., 27th Leg., Alberta, 2009.

[3] Legislative Assembly of Alberta, *Alberta Hansard* (25 May 2009) at 1205.

[4] *Ibid*.

[5] Michael Whittington and Richard Van Loon, *Canadian Government and Politics: Institutions and Processes* (Toronto: McGraw-Hill Ryerson Ltd.,1996) at 121.

[6] *Ibid*. at 498.

[7] Trish Audette, "Stelmach's unmoved as teacher's vow to fight parental rights measure" *Calgary Herald*(21 May 2009).

[8] Trish Audette, "Proposed changes to Alberta's human rights laws to include sexual orientation"*Edmonton Journal* (28 April 2009).

[9] *Supra* note 4 at 360-361.

[10] Craig Forcese and Aaron Freeman, *The Laws of Government: the Legal Foundations of Canadian Democracy* (Toronto: Irwin Law, 2005) at 316-317.

[11] Inside Canada's Parliament, *Library of Parliament* (2002) at 28.

[12] Sheila Pratt, "Stelmach's government shifts from left to right" *Edmonton Journal* (19 May 2009).

[13] John DeMount, "McKenna Re-elected" *Macleans* (25 September 1995); "The Premier's Biography"*Province of British Columbia* (undated).

[14] Peter Russell *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy* (Toronto: Emond Montgomery Pub. Co., 2008) at 172-174.

[15] Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3 at para. 100.
[16] Reference re Secession of Quebec [1998] 2 S.C.R. 217 at para. 61.
[17] *Supra* note 13 at 101.
[18] *Supra* note 2.
[19] Anna-May Choles, "Bill 44 Finishes Second Reading, Inches Closer to Amending Alberta's Human Rights Law" *Center for Constitutional Studies* (22 May 2009).
[20] 2nd Sess., 27th Leg., Alberta, 2009.
[21] *Supra* note 9 at 396.