Governor General of Canada: the Role, the Myth, the Legend

The Governor General of Canada is the representative of Canada's head of state – the Queen.[1] The *Constitution Act, 1867* expressly states that the executive branch of Canada's government is assigned to the Queen and that the Governor General will "[carry] on the Government of Canada on behalf and in the name of the Queen."[2] Further, the *Letters Patent, 1947* – issued by King George VI (the predecessor of Queen Elizabeth II) in 1947 – delegates the monarch's powers in Canada to the Governor General.[3]

The powers of the Governor General

The *Constitution Act, 1867* grants extensive powers to the Governor General. These powers include the power to appoint senators and superior court judges, as well as the ability to grant and withhold royal assent to bills (royal assent allows a proposed law to become an actual law).[4] In reality, however, the Governor General's role in exercising these powers is largely symbolic.[5]

The Governor General's exercise of powers is mainly symbolic because Canada's Constitution is comprised of both written and unwritten rules, and the role of the Governor General is governed almost entirely by the unwritten rules of the Constitution. [6] More specifically, constitutional conventions help guide the Governor General's role – these are "informal rules that bind political actors to behave in a certain way and which are not normally enforceable in the courts."[7]

For example, while section 55 of the *Constitution Act, 1867* gives the Governor General the power to withhold royal assent from a proposed law (which would stop the law from being created), this power has never been exercised.[8] This power is not exercised because withholding royal assent would violate constitutional convention.[9]

The Governor General and "responsible government"

The Governor General has the constitutional responsibility to ensure that the conventions of responsible government are respected.[10] "Responsible government" is a principle that guarantees that the executive branch of government is accountable to the elected representatives in the House of Commons.[11]

The conventions of responsible government require the Governor General to act in accordance with the advice of the prime minister who has the support of the majority of representatives in the House.[12] In practice, this means that the Governor General will almost always act on the prime minister's advice when appointing ministers and proroguing (or suspending) and dissolving Parliament.

The Governor General's "reserve" powers

While the role of the Governor General is significantly restricted by conventions, it is not entirely symbolic.[13] On rare occasions, a Governor General can exercise personal discretion, meaning that he or she can act independently of prime ministerial advice. This ability to exercise personal discretion revolves around the Governor General's "reserve powers."[14] Two established reserve powers are the Governor General's authority to refuse a prime minister's request to dissolve Parliament and the right to appoint and dismiss a prime minister.[15]

The Governor General's reserve powers are necessary for ensuring that the conventions of responsible government are observed. For example, the Governor General's power to dismiss the prime minister may be necessary in the event that a prime minister violates constitutional convention by refusing to resign after an opposition party obtains a clear majority in a general election.[16] Equally important is the Governor General's power to appoint a prime minister, which ensures that the Crown always has a prime minister to advise exercises of the Crown's power and to take responsibility for acts of the Crown before the House of Commons.[17]

Dramatic moments: Governor Generals taking the spotlight

What does it look like when the Governor General flexes his or her reserve powers?

Canadian drama

The last time the Governor General refused to accept the advice of a Canadian prime minister was in 1926 (commonly referred to as the "King-Byng Affair").[18] This constitutional crisis emerged in the aftermath of the 1925 federal election where William Lyon Mackenzie King and his Liberal Party remained in government, despite winning less than half of the seats in the House of Commons. In fact, King's Liberal Party held only 99 seats after the election, compared to the 116 seats won by the Conservative Party (led by Arthur Meighen).[19] King was able to remain in power after the election because he had the support of the Progressives (who won 24 seats) and the six elected representatives who did not affiliate with any party.[20]

Less than a year after the 1925 election, Prime Minister King, facing allegations of scandal and having only a precarious hold on power, requested that the Governor General dissolve Parliament to trigger another election.[21] Governor General Julian Byng refused the request. King then resigned (as convention says that prime ministers must do so when the Governor General refuses their advice), and Governor General Byng then appointed Meighen as prime minister, allowing him to form government.[22]

While no Governor General has refused the advice of a prime minister since 1926, the potential for such drama appeared to be at hand once again in 2008. At that time, Prime Minister Stephen Harper requested that Governor General Michaëlle Jean prorogue Parliament for nearly two months.[23] This request was remarkable because it was made when Harper, whose Conservative Party held only enough seats to form a minority government, faced what appeared to be an imminent defeat in the House of Commons.[24]

The opposition parties (whose collective seats added up to a majority of seats in the House) had announced that they were prepared to work together to form a coalition government to replace Harper's Conservative ministry.[25] Proroguing Parliament would delay such a replacement and make it more likely that a coalition formed between the opposition parties would fall apart before they were able to take power.

Ultimately, the Governor General accepted Harper's advice to prorogue Parliament and the result was that the Conservative government was able to remain in power. She thereby avoided becoming the first Governor General to ever refuse the advice of a Canadian prime minister on prorogation.[26]

An Australian tale: the power to dismiss

Like Canada's Governor General, the Governor General of Australia has the power to dismiss a prime minister in rare circumstances.[27] In Canada, we can only speculate as to what would happen if the Governor General attempted to exercise that power because we have never faced such a situation. However, Australia's history gives us some insight into what it might look like.

In the autumn of 1975, Australia's House of Representatives and Senate became locked in a political standoff. The Prime Minister, Gough Whitlam, held a majority of seats in the House of Representatives, but he was unable to get the Senate (made up of a majority of senators who opposed Whitlam's Labor Party) to approve his budget bills.[28]

To resolve the deadlock, the Governor General dismissed Prime Minister Whitlam, essentially "sacking" him and removing his ministry from power.[29] The Governor General appointed the leader of the opposition party in the House of Representatives, Malcolm Fraser, as prime minister.[30] Fraser's government was able to get budget bills passed, and when he requested that Parliament be dissolved for another election to be held, the Governor General accepted the request. This all happened in spite of Whitlam's belief that the Governor General could act only on the advice of the prime minister.[31]

What the future likely holds in store

Are Canadians likely to see a constitutional drama unfold before their eyes in the foreseeable future? The best advice would be: don't hold your breath.

The Governor General maintains an important symbolic and constitutional role in Canada, but convention dictates that the role remains primarily a quiet one.[32] The near future is likely to follow the precedents set in Canada's past – where it is the elected representatives who resolve conflicts through debate and negotiation to determine the country's future.[33] Governor Generals to come can be expected to keep the use of their reserve powers to a minimum and stay out of the political spotlight as much as possible.

* The authors would like to acknowledge and thank Professor Philippe Lagassé for his helpful review of this article and for lending his expertise to give them a greater insight into the role of Canada's Governor General.

[1] “Role and Responsibilities” (12 November 2015), *Governor General of Canada*, online: <www.gg.ca/document.aspx?id=3&lan=eng>.

[2] *Constitution Act, 1867 (UK)*, 30 & 31 Vict c 3, ss 9, 10, reprinted in RSC 1985, Appendix II, No 5 .

[3] Kenneth Munro, “The Canadian Crown: The Role of the Governor General”, *LawNow* (1 November 2009), online: <www.lawnow.org/role-of-the-governor-general/>. Note that the *Letters Patent, 1947* also makes the Governor General the Commander-in-Chief of the Canadian military.

[4] *Constitution Act, 1867*, *supra* note 2, ss 24, 55, 96.

[5] Peter W Hogg, Constitutional Law of Canada, vol 2, 5th ed (Toronto: Thomson Reuters, 2007) (loose-leaf 2010 supplement), ch 9 at 9.1.

[6] *Ibid*, ch 9 at 9.3. Peter H Russell & Lorne Sossin, *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009) at 81.

[7] Russell & Sossin*, ibid* at 50.

[8] Robert Sheppard, “The delicate role of the Governor General”, *CBC News* (2 Dec 2008), online: <www.cbc.ca/news/canada/the-delicate-role-of-the-governor-general-1.701974>.

[9] Hogg, *supra* note 5, ch 9 at 9.5(d)

[10] Russell & Sossin, *supra* note 6 at 88.

[11] *Ibid* at 53.

[12] See e.g. Peter Neary, “The Morning After a General Election: The Vice-Regal Perspective”

(2012) 35:3 Canadian Parliamentary Review 23 at 23, 27; Hogg, *supra* note 5, ch 9 at 9.7(a).

[13] Russell & Sossin, *supra* note 6 at 88.

[14] Hogg, *supra* note 5, ch 9 at 9.7(a).

[15] *Ibid*, ch 9 at 9.7(a)-(d).

[16] Russell & Sossin, *supra* note 6 at 88.

[17] “The True Nature of Crown Prerogative and Responsible Government”, *Parliamentum* (23 February 2012), online: <parliamentum.org/2012/02/23/when-phds-dont-understand-westminster-parliamentarism//>.

[18] Neary, *supra* note 12 at 24-25; Allan Levine, "That King-Byng thing", *National Post* (15 September 2015), online: <nationalpost.com/opinion/allan-levine-that-king-byng-thing/wcm/a957635c-8a16-415e-9f8d-d13eaa117a30>.

[19] Neary, *ibid* at 25; Levine, *ibid*.

[20] *Ibid*.

[21] *Ibid*.

[22] *Ibid*.

[23] Hogg, *supra* note 5, ch 9 at 9.7(d.1); Andrew Heard, "The Governor General's Decision to Prorogue Parliament: A Dangerous Precedent" (8 December 2008), *Centre for Constitutional Studies*, online: <ualawccsprod.srv.ualberta.ca/index.php/constitutional-issues/democratic-governance/47-the-governor-general-s-decision-to-prorogue-parliament-a-dangerous-precedent?highlight=WyJwcm9yb2d1ZSJd>.

[24] *Ibid*.

[25] *Ibid*.

[26] *Ibid*. Controversy exists as to whether the Governor General actually *could* refuse Harper's advice to prorogue in this instance (because he had not lost a vote of non-confidence in the House of Commons) and whether the Governor General *should* refuse the advice of a prime minister because of an agreement between opposition parties that has not yet been tested by a vote in the House.

[27] Hogg, *ibid,* ch 9 at 9.7(c).

[28] *Ibid*; Paul Kelly, *The Unmaking of Gough* (Australia: Angus & Robertson, 1976) at 4-6, 272.

[29] Hogg, *ibid,* ch 9 at 9.7(c); Kelly, *ibid* at 9, 295.

[30] *Ibid*.

[31] Kelly, *ibid* at 5, 272, 274.

[32] Neary, *supra* note 12 at 25-26, 28-29. See generally Hogg, *supra* note 5, ch 9 at 9.7(a)-(d.1).

[33] *Ibid*.