



Government Formation: The Need for Clear Guidelines

ROUNDTABLE WITH SIR GUS O'DONNELL



Public Forum
Policy des politiques
Forum publiques

ppforum.ca

SUMMARY REPORT
JUNE 2011



Public Policy Forum

Building Better Government

The Public Policy Forum is an independent, not-for-profit organization dedicated to improving the quality of government in Canada through enhanced dialogue among the public, private and voluntary sectors. The Forum's members, drawn from business, federal, provincial and territorial governments, the voluntary sector and organized labour, share a belief that an efficient and effective public service is important in ensuring Canada's competitiveness abroad and quality of life at home.

Established in 1987, the Forum has earned a reputation as a trusted, non-partisan facilitator, capable of bringing together a wide range of stakeholders in productive dialogue. Its research program provides a neutral base to inform collective decision making. By promoting information-sharing and greater links between governments and other sectors, the Forum helps ensure public policy in our country is dynamic, coordinated and responsive to future challenges and opportunities.

© 2011, Public Policy Forum
1405-130 Albert St.
Ottawa, ON K1P 5G4
Tel: 613.238.7160
Fax: 613-238-7990
www.ppforum.ca

ISBN: 978-1-927009-20-8



Acknowledgements

I wish to thank Sir Gus O'Donnell for helping us further our dialogue by providing an overview of the British experience of creating guidelines for government formation in the context of a draft cabinet manual. Thanks and appreciation as well to His Excellency Dr. Andrew Pockock, for coordinating the visit of Sir Gus O'Donnell, and to Chris Williams from the Cabinet Office and Sam Pass from the UK High Commission, for their assistance in making the visit a success.

Our roundtable participants also warrant thanks for providing much needed insight into the challenges facing the public service, political parties, the Crown, media and the public during periods of transition and government formation.

This report is our attempt to capture the advice and recommendations of the discussion. The Public Policy Forum's work in this area will continue, particularly in initiating the process of establishing guidelines that clearly outline the rules and responsibilities of stakeholders involved in forming governments in Canada during periods of potential uncertainty, i.e. minority parliaments.

I especially want to thank my colleagues at the Public Policy Forum for their work on this important project, including Mary-Rose Brown for helping to organize the June 1st roundtable and for drafting this report. James McLean and Ryan Conway provided research support and overall coordination. I also want to note the contributions of Julie Cafley, Vice-President, for her oversight of this project.

In releasing this report and initiating a dialogue on government formation, the Public Policy Forum remains true to its mission of creating a "safe space," for discussion among leaders from all sectors. on governance in Canada. All individuals and groups who work to bring clarity to issues of governance in our country should be applauded and encouraged.

David J. Mitchell
President and CEO
Public Policy Forum



Government Formation: The Need for Clear Guidelines

Contents

Introduction 1

The UK Experience 2

Key Themes and Lessons..... 3

Role of the Public Service..... 3

Role of the Crown 4

Role of Political Parties..... 4

Role of the Media 4

Conclusion 5

Appendix: Participants..... 6



Introduction

On May 2, 2011, the longest era of minority parliaments in Canadian history ended when voters elected a majority parliament in the 41st general election.

In the days leading up to the election, confusion and speculation persisted about the prospective outcome, especially the options for government formation if no clear majority was achieved. The confusing, and at times heated, discussion about the possibility of a coalition government demonstrated the need for clarity on the rules of government formation in Canada.

As stated in our March, 2011 roundtable summary report, there is a need for a dispassionate dialogue on the subject of government formation. Our goal is to provide objective research and clear thinking that will help inform elected representatives, public servants, the media and the general public about the principles associated with government formation.

We identified an opportunity to advance the dialogue initiated at our roundtable in March by drawing upon the expertise of leaders from other Westminster parliaments. Looking to the experience of other jurisdictions is an important step in advancing a constructive dialogue about government formation in Canada. For this reason, the Forum invited Sir Gus O'Donnell, Secretary of the Cabinet and Head of the Civil Service of the United Kingdom, to meet with a group of Canadian constitutional and parliamentary experts to discuss the recent experience of the UK in producing a Draft Cabinet Manual. We were particularly interested in the topic of government formation, which is addressed in the UK manual.

This summary report highlights the key themes that emerged at our roundtable on June 1st with our special guest Sir Gus O'Donnell. (For a list of participants see the Appendix.) Reflecting on the roles of the public service, the Prime Minister, the Crown, and the news media during periods of transition and government formation, roundtable participants agreed that:

- The public needs to be informed and educated about the conventions and rules concerning government formation;
- The public service must support the government of the day, while working with all parties and opposition leaders, with the agreement of the Prime Minister;
- The public service should provide a neutral “safe space” for stakeholders to meet, and;

Discussions should ideally take place during periods when the government is not at risk of being defeated or parliament dissolved (this was referred to as “peace time”).



The UK Experience

On February 2, 2010, then-Prime Minister Gordon Brown announced that he had asked the Cabinet Secretary "to lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document." This document, since released in draft format, represents the evolution of significant efforts both inside and outside government to draw attention to the important need for clarity around the operation of government in a British parliamentary context, including the rules of government formation.

Much of the work in the UK to initiate a dialogue on government formation was led by the non-partisan Institute for Government. The work of the Institute was especially made evident with the December 2009 release of the report: *Making Minority Government Work: Hung parliaments and the challenges for Westminster and Whitehall*. This report was the result of several years of work including collaboration with the Constitution Unit of the University College of London and represented significant consultations with politicians, senior civil servants, parliamentary staff, academic experts and journalists, both in the UK and in other Westminster-style countries. The purpose of this work was to help facilitate the possible transition from one form of government to another (e.g. from majority to minority, from minority to coalition, etc.)

Further pressure came with the approach of the general election of May 2010 and increasing media attention to the topic. Ongoing debate about the possibility of a minority parliament, after over 30 years of relatively stable majority parliaments, led to increasing concern expressed in the media. Further, it became obvious that neither the media, nor the public, possessed a clear understanding of the rules and conventions surrounding government formation under such circumstances.

Addressing these key questions therefore became a focus of the UK Draft Cabinet Manual, released following the election. Since the Manual's release on December 14, 2010, citizens have had the opportunity to provide feedback via the internet and the document is currently being revised to include feedback from the public and parliamentarians.

The Draft Cabinet Manual has been lauded for its simplicity and clarity in identifying the rules and practices of modern governance as they currently exist. Rather than serving as an exclusive guide for public servants and politicians, it is also considered a significant document for public education.





Key Themes and Lessons

The focus of our June 1st roundtable discussion was to determine the relevant lessons that can be learned from the process of creating the UK's Draft Cabinet Manual. These lessons, pertaining to the appropriate roles of the public service, the Prime Minister and other elected officials, the Crown and the media, are detailed below.

Role of the Public Service

The public service must support the government of the day: Roundtable participants stressed that the public service does – and must continue to – serve the government of the day. Successful dialogue with other parties can only take place if the government, and especially the Prime Minister, trusts that the public service will protect the integrity of the government. Therefore, such dialogue must be based on the express consent and wishes of the Prime Minister in order for the public service to begin engaging the other political parties and opposition leaders.

Beyond initiating the process of government formation, this role includes the period of government transition, in that the public service must continue to serve the Prime Minister, until the time that he resigns.

The public service should provide a neutral “safe space” for stakeholders to meet: Building on the preceding point, a strength of the public service lies in its ability to engage all parties in a neutral and non-partisan manner. During a period of government formation, the electoral outcome may create a situation of heated, partisan debate. It remains the role of the public service to provide a neutral environment for informed discussion and, if necessary, negotiation.

The need for a civil and open environment is relevant not only during the actual process of government formation, but also in the months leading up to an election. Initiating discussions during “peace-time” – outside of and prior to an election period – allows the public service to facilitate relationships of trust between stakeholders who may ultimately be responsible for government formation.

The public service should provide advice based on convention and best practices: The actual substance of the Draft Cabinet Manual was designed to lay out the rules as they currently exist and are practiced in the UK. The document was not intended to create new rules but, rather, to accurately describe current and past practices in a way that informs dialogue among political parties, should there be disagreement or differences of interpretation.

Roundtable participants noted that while the public service should not make recommendations as to what the rules should be, it should be able to inform the discussion with best practices based on precedent and the experience of other Westminster jurisdictions.

Dissemination of information by the public service is an important role during the period of government formation, with briefings provided regularly to all parties involved.



The public service should inform and educate the public: Just as some politicians and parliamentary experts have expressed differing understandings of the rules related to government formation, so too have members of the news media. As a result, the general public has often become confused by the discussion. The Draft Cabinet Manual was created to serve as much as a document for public education as it was for clarification of rules for key stakeholders.

Role of the Crown

Keep the Crown above politics: The role of the Crown in both the creation of the Draft Cabinet Manual and in the process of government formation is intentionally minimal. An important goal of the Draft Cabinet Manual is to keep the Crown above politics – to maintain the separation between the electoral process and the monarchy. Representatives of the Crown should be kept abreast of the process, but the appropriate separation between the monarchy and the electoral process should be maintained.

Role of Political Parties

Commit to negotiations based on trust and respect: It was stressed that the true success of the recent process of government formation in the UK has been the willingness of political parties to agree on an outcome. While the public service plays an essential role in establishing the foundation of the system, it is the ongoing commitment of political leaders to an open dialogue based on pre-determined rules for engagement that ensures a smooth period of transition and government formation. Building trust and committing to rules in “peace-time” – far in advance of the election writ period – helps to create a smooth environment for discussion and negotiation.

Role of the Media

Convey messages in an informed and neutral manner: The appropriate role for the news media in this process was also discussed. As the major source of public information, the media can shape opinion and discourse. A conscious effort was therefore made to ensure that informed experts were able to liaise with journalists and comment on both the principles and the outcomes as they developed.

Whitehall, the home of the UK government, was especially sensitive to the need to provide a neutral venue for media engagement. By serving as a backdrop for media scrums, Whitehall was able to diffuse some of the media speculation that may have occurred by having party leaders speaking to the press from a more “battleground” location, such as 10 Downing Street, the residence of the Prime Minister.





Conclusion

The experience of government formation in the UK following the May 2010 election was ultimately lauded as providing a smooth and successful transition to an unexpected coalition government. All participants were respectful of the rules and conventions that governed the process, and heeded their responsibility for maintaining a productive negotiating environment. This experience led to the codification of the rules and conventions of government formation in a section of the UK Draft Cabinet Manual. This will ensure greater clarity for future transitions.

In Canada, we have the opportunity to create similar conditions, by inviting the political parties, public service, media and public to participate in a mature dialogue on government formation. The sometimes heated rhetoric concerning topics such as minority parliaments and coalition governments has sowed the seeds of confusion. The election of a clear majority has now created the ideal “peace-time” conditions allowing for a neutral and reasoned discussion on the subject. With the support of the Prime Minister, political parties, and the public service, we have an opportunity to take the example set by the UK and New Zealand to create publicly-available guidelines for the successful and smooth process of government formation. The outcome of such an exercise will be both a great service to the public, and to the tradition of peace, order, and good government in Canada.



Appendix: Participants

Participants at the Public Policy Forum Roundtable on Government Formation June 1st, 2011

Moderator: David Mitchell, President and CEO, Public Policy Forum

Special Guest: Sir Gus O'Donnell, Secretary of the Cabinet and Head of the Home Civil Service

Participants

Paul Benoit
Senior Counsellor
Hill & Knowlton in Ottawa

Margaret Bloodworth
Former Associate Secretary to the Cabinet and
National Security Advisor to the Prime Minister

Peter Burn
Partner
Gowlings

Mel Cappe
Former Clerk of the Privy Council

Giles Gherson
Deputy Minister of Policy and Delivery and
Associate Secretary of the Cabinet
Government of Ontario

C.E.S. (Ned) Franks
Professor Emeritus
Queen's University

Gary Levy
Editor
Canadian Parliamentary Review

Cheryl Milne
Executive Director
David Asper Centre for Constitutional Rights
University of Toronto

Peter Oliver
Professor, Faculty of Law
University of Ottawa

His Excellency Dr. Andrew Pocock
High Commissioner of the UK to Canada

Colin Robertson
Senior Strategic Advisor
McKenna, Long and Aldridge

Peter H. Russell
Professor Emeritus
University of Toronto

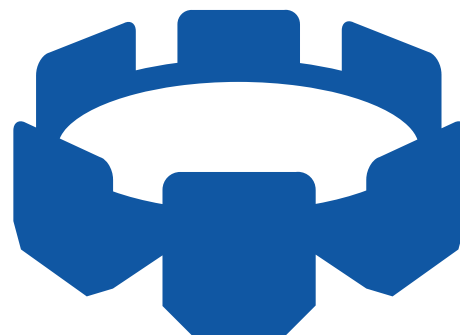
David Zussman
Jarislowsky Chair in Public Sector Management
University of Ottawa

Observers

Lois Claxton
Senior Advisor to the Governor General of Canada
Rideau Hall

Yvan Roy
Deputy Secretary to Cabinet, Legislation and
House Planning and Machinery of Government
Privy Council Office





Public Forum
Policy des politiques
Forum publiques

ppforum.ca