

# There's no hint whether prorogation came with strings attached

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Whatever it is that Governor-General Michaëlle Jean told Prime Minister Stephen Harper in Rideau Hall yesterday, it does not set a precedent that will let future prime ministers escape censure by willy-nilly shutting down Parliament.

Constitutional conventions and precedents don't tie the hands of governors-general and the application of what's known as their reserve powers in the same way that, for example, they steer judicial decisions, according to constitutional scholars.

If they did, Ms. Jean might be getting her hands smacked today for not following the decision made by the Earl of Dufferin, governor-general in 1873, when Sir John A. Macdonald asked him to prorogue Parliament so that he could halt the work of a committee investigating his improper acceptance of campaign funds.

Lord Dufferin only reluctantly agreed. But he set a firm time limit on the suspension - 10 weeks. And when Parliament resumed, Sir John A. was censured and had to resign.

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Canadians don't know if Ms. Jean attached any conditions when she acceded to Mr. Harper's request yesterday to prorogue Parliament, allowing him to avoid a no-confidence vote scheduled for Monday that could have scuttled his minority government.

They may never know. Conversations between prime ministers and governors-general, who represent the Queen as head of state, are by tradition not disclosed.

Mr. Harper and Ms. Jean apparently met with only someone from the Governor-General's staff present as note-taker. He told her why he wanted prorogation. She then met privately with her legal and constitutional advisers. She then met with Mr. Harper again and told him her decision.

Presumably only by scrutinizing Mr. Harper closely over the next few weeks and watching for changes to his governing behaviour will there be any hint on whether his prorogation came with strings attached, said constitutional scholar David Smith of the University of Saskatchewan.

One option open to her was granting Mr. Harper a qualified prorogation - placing his administration in the straitjacket that limits what governments can do during an election campaign.

If the same limitations restrict what Mr. Harper's government can do until it meets Parliament on Jan. 26, the Prime Minister might not, for example, be allowed to make appointments such as filling the 18 vacancies in the Senate.

The key point is that whatever Ms. Jean did yesterday won't tie the hands of future governors-general or unleash future prime ministers to run over Parliament with their boots.

The reserve powers - the powers that may be exercised by the governor-general without the approval of another branch of government - are undefined and will never be defined, Prof. Smith said.

Because personalities, time and chance matter enormously in politics, Queen's university political scientist C. E. S. Franks said, the reserve powers of the governor-general to respond to constitutional fires have to be unfettered to deal with the unexpected and unprecedented.

"There's no rule that you can't act here or you can't act there," he said.

Similarly, the reserve powers don't fall under the umbrella of what is known as convention, the non-legal rules of the Constitution.

For example, the Constitution makes the Queen and governor-general essential parties to all federal legislation and expressly confers upon them the power to withhold royal assent from a bill passed by both houses of Parliament.

But convention stipulates that royal assent is never withheld - and it never has been withheld federally.

With Ms. Jean's decision yesterday, said Prof. Franks, a leading scholar on parliamentary procedure, "while this might be a guide for future governors-general, it won't be a precedent."

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