



The opening of the third session of the 17th Legislative Assembly of the Northwest Territories in Yellowknife. Consensus government is a perpetual minority. Photo: Bill Braden

# Power in Consensus Government

David M. Brock

*For anyone observing Canadian politics on a regular basis, the model of consensus government can seem like an unattainable ideal. In the North, where perspective comes in hundreds of kilometres and survival can depend on collaboration, partisanship can be toxic. Consensus government works in the Northwest Territories and Nunavut for reasons that may have little to do with geography. Or so the rest of us can hope.*

The Northwest Territories and Nunavut both employ a system of consensus government, which is often identified by what's most conspicuous in its absence: political parties. More broadly, consensus government is defined by a number of distinct characteristics: no registered political parties, a governing policy mandate set by all elected members, a premier and cabinet elected by fellow members and serving in perpetual minority, no official opposition, a strong role for legislative committees, and a predisposition for civil dialogue. Though there are distinctions between the application of the consensus system in the two territories, the primary characteristics of the system are reflected in both jurisdictions.

Although small points of distinction between Nunavut and the NWT are interesting, it is the contrast between consensus government and the party system that fascinates most. What the consensus system means for political behaviour, resource allocation, and policymaking is worthy of study.

To this end, the making of election law serves as a useful point of comparison between the partisan parliamentary system found in most Canadian jurisdictions and the northern system of consensus government.

Election outcomes shape policy decisions. Elected representatives in all Canadian legislatures thus have an infinite appetite for the examination of election law. They know that the rules of the game mediate the path to power.

In June 2014, the Legislative Assembly of the Northwest Territories passed Bill 26—*An Act to Amend the Elections and Plebiscites Act*. Anyone familiar with recent debate over the federal *Fair Elections Act* (C-23) would be struck by the contrast in legislative process. As in all jurisdictions, suggested changes to the electoral system begin with a report from the chief electoral officer following an election. In a consensus system, the report of the CEO is tabled, and then referred to committee for study and public review. The report of committee is then brought back to the House with a motion to adopt the committee's recommendations. Where legislative amendment is recommended, a bill is sponsored by a member of the Board of Management of the Legislative Assembly. Drafting instructions are prepared by the CEO. After the bill is introduced, and following second reading, the bill is referred to Committee of the Whole for consideration before third reading. Assent is given by the territorial commissioner.

A familiar term is missing from the paragraph above: government. In the consensus system, the executive council plays no special role in the making of election law. The views of the individuals who occupy the positions of premier and minister are of no lesser importance than those of other members, but also no greater.

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One should not be fooled into thinking that consensus government extracts the politics from policy making. Questions can be tough and divisions deep. However, on matters of rules and procedure, such as changes to election administration, the structure of the consensus system decreases the likelihood that policy will be shaped by the contours of partisanship. Where divisions do appear, they are more likely to form along lines of culture or geography.

Another example of how the consensus system mediates partisan disputes on matters of democracy comes from the redistribution process. Following a recent review of NWT electoral boundaries by an independent commission, the House voted 11—7 to maintain the current number of electoral districts while adopting one significant change to how the boundaries are drawn. More to the point, amongst the seven members who voted against the bill were two cabinet ministers. The reasons for their dissent were evident, and there was no suggestion that they would, or should, be sanctioned for their positions. This example underscores the important point that consensus is not a synonym for unanimity.

In the past decade there have been too many instances in Canada where perceived partisanship has molded changes to election administration. These instances have raised questions about electoral fairness, and, cumulatively, can cultivate concerns about democratic legitimacy. At the national level, partisanship was perceived to motivate Liberal government legislation on state subsidies for political parties in 2003 as well as the Conservative government's comprehensive election legislation in 2014. At the provincial level, in 2012 election financing legislation was passed in Alberta despite opposition protests and in Saskatchewan the

province went four years without an appointed chief electoral officer due to partisan quarrels. And, despite the Canadian tradition of independent electoral boundary commissions, recent redistribution exercises in provinces such as Nova Scotia and British Columbia have triggered intense partisan wrangling.

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The Legislative Assembly of the Northwest Territories has 19 single member electoral districts compared with 22 for the Legislative Assembly of Nunavut. With total territorial populations of approximately 43,000 and 33,000, respectively, this means that the NWT has an average of 2,282 persons per riding while Nunavut averages 1,509 per riding. These are small electoral districts by any national comparison.

Without political parties, not only does the making of election law differ, elections themselves operate differently. For those familiar with national and provincial elections, the closest com-

parable equivalent is when an ‘independent’ contests an election in a party system. Each candidate for territorial election is nominated in their district by gathering the signatures of a minimum number of eligible electors and submitting the approved forms to their returning officer. This nomination process helps to avoid some of the pitfalls of nomination contests held by riding associations, such as exclusion based upon gender, but at the same time it removes a vehicle for candidate recruitment.

There are no legal restrictions on a candidate advertising himself or herself as a member or supporter of a political party, but there is also no mechanism to register or officially recognize any parties. As such, the name (and photo) of a candidate will appear on the ballot but without any indication of party affiliation. Past territorial candidates who have publicly claimed affiliation with an established national party or upstart local party (actually, society) have never been successfully elected in either territory. This fact perhaps illustrates not only the institutional barriers to creating territorial political parties, but also a political culture that appears to reject party affiliation at the ballot box.

**T**he reasons advanced for this political culture range from honouring traditions of dialogue in aboriginal political systems that existed prior to colonization and persist today, to the historical origins of territorial government and the desire of colonial powers to maintain control over executive decision-making.

After the close of polls, residents know who will be the elected representative for their riding but do not yet know who will serve in cabinet or as premier. The first minister and each individual minister are elected, a few weeks later, among members themselves, during a territorial leadership meeting. However, the portfolio(s) held by any one minister, are the prerogative of the premier. At present in NWT, the executive council is comprised of seven of 19 members; in Nunavut, the executive composition



The NWT Legislature in session. As in Nunavut, MLAs sit in their own name, not as party members. Photo: Bill Braden

is nine of 22: thus leaving territorial governments in a perpetual legislative minority.

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The peculiarities of consensus government don’t end with the election of members and the formation of government. It truly is, however, Westminster in the Arctic. Many aspects of consensus government mirror those found in other Canadian parliamentary systems. The orders of the day for legislative sessions are relatively familiar with statements, question period, the tabling of documents, and reading of bills. Most legislation introduced, including supply

bills, emanates from government. Motions still must pass by majority. Parliamentary privilege still applies. On the government side, the cabinet conventions of collegiality, confidence, and collective responsibility all hold. Those members not in cabinet still have pivotal roles as representatives and ombudsmen.

There is, perhaps, less certainty regarding other parliamentary pillars. With expanded legislative authorities devolved to territorial governments, what is the appropriate balance for regular members as they relate to the government as both policy advisors and opposition critics? Is it possible for a motion of confidence to defeat the government, cause the dissolution of the legislature, and result in a general election before the fixed date? The mere existence of such questions speaks to the evolution of responsible government in the North.

Consensus government as it is practiced today in the Northwest Territories and Nunavut may not be a panacea, but, as the territorial making of election law demonstrates, it does offer useful innovations in governance that may assist other jurisdictions in thinking about how to modernize Canadian democracy. **P**

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