Speech

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Speaker: The Rt Hon Sir Michael Hardie Boys, GNZM, GCMG, QSO

Introduction

Dr Peter Hennessy, the well known constitutional historian, once gave a speech in which he described how, over half a lifetime, he had searched for official documents articulating the principles on which the British Constitution is based. He likened his search to a "magical mystery tour" and complained that at the end of more than twenty five years, his collection comprised one solitary declassified file dating from 1949, a 1950 letter written by the King’s private secretary to The Times and some material gleaned from personal contacts in Whitehall.

Until the last fifteen years or so, Dr Hennessy would have been just as frustrated in searching for similar material in New Zealand. Together with its unwritten Constitution, my predecessors inherited from Britain a marked reluctance publicly to canvass the conventions and principles surrounding and supporting the New Zealand Constitution.

However, in the last fifteen years there has been a significant shift in the relationship between the various institutions of government and the New Zealand public. The climate of reform, combined with a growing culture of transparency and openness, has led to a much greater level of public consultation and discussion.

The advent of MMP in 1996 focused this process on our constitutional arrangements. The issue of electoral reform and its consequences sparked widespread interest in constitutional issues across the country. Aspects of the Constitution which had previously remained in the shadows came regularly to be discussed by academics and other commentators.
As the first MMP election approached, I considered carefully how I could usefully contribute to the debate and discussion that was gripping the country, particularly in relation to the issue of government formation. Some may have been surprised that the Governor-General should give an advance indication of his likely actions. But we were in an extraordinary period of change. Public education was vital if confidence in the electoral and political system were to be maintained. The participants in the political process would also be assisted if there were at least some common understanding of the Governor-General's role in the government formation process. And of course, there was the perennial refrain of the need for the money markets and international observers to be informed and reassured about how this leap into the new era would be accomplished.

In April 1996, I gave a speech which was widely reported, in which I outlined in general terms how I saw my role. I also gave a series of interviews over the following months repeating and clarifying these key points, concluding with a television documentary which screened very shortly before the date of the election. The aim was to ensure, so far as possible, that the principles and processes for moving from the election to the formation and appointment of a new Government were clear, and understood by a sufficient number, so that the focus of public attention could be where it belonged - on the political actors who would be required to negotiate and work together to reach a political resolution. I tried, in essence, to make a few simple points:

- The formation of a Government is a political decision and must be arrived at by politicians.
- My task as Governor-General is to ascertain where the support of the House lies. In an unclear situation, that might require me to communicate with the leaders of all of the parties represented in Parliament.
- Once political parties have reached an adequate accommodation, and a Government is able to be formed or confirmed, the parties could be expected to make that clear by appropriate public announcements of their intentions. At that point it might be necessary for me to talk with some party leaders. I would then expect to have sufficient information to be able to appoint a new Prime Minister, if that were required.
- Throughout this period of negotiation, the incumbent Prime Minister remains in office, governing in accordance with the caretaker convention (under which the incumbent Government remains the lawful executive authority, but constrains its actions until the political situation is resolved and a successor is appointed).

The work of the Electoral Commission in its public education campaign before the 1996 election was also helpful. Its material contained succinct explanations of the role of the Governor-General, the reserve powers and the concept of caretaker government.
My personal assessment overall is that the public education process went well. In the period following the election, all the participants demonstrated a clear understanding of their respective roles and the relevant processes. The media in particular were very clear on election night and over the following weeks as to what needed to happen. There was no media entourage camped outside Government House, waiting for me to emerge and proclaim some magic resolution. Rather the country witnessed the media day after day camped in the corridors of Parliament, clustering around the politicians when they periodically emerged from their coalition talks.

Although I covered fully my role in the government formation process before the 1996 election, I quite deliberately focused far less on my role in the possible event of a mid-term political crisis. So perhaps it is not surprising that when the National/New Zealand First Coalition Government was in the process of breaking up during August of this year, some media representatives called Government House asking for my views, and even requested that I appear on television to address the country about these political events.

It was explained that it was neither necessary nor appropriate for me to comment on the political situation; this was a political matter for the political players to resolve. However, those enquiries prompted me to think that it might be helpful if I were to explain the respective roles of the politicians and the Governor-General during a mid-term political crisis, particularly as such events may well be more likely under a proportional representation electoral system than they were under first past the post.

That is my intention this afternoon. I will approach the issues first by reviewing, from my perspective as Governor-General, the two significant mid-term political tests to arise since the 1996 election (by which I mean the change of Prime Minister in December 1997, and the transition from a majority coalition Government to a minority coalition Government in August this year). From those events I will identify the key principles that I believe guide the interlocking roles and responsibilities of the politicians and the Governor-General during a mid-term period of political uncertainty.

Change of Prime Minister - November/December 1997

On 3 November 1997, the Rt Hon Jim Bolger, then Prime Minister, announced that he would resign as Prime Minister at the end of the month, and that the Hon Jenny Shipley would replace him as Leader of the National Party and as Prime Minister. On 4 November the Rt Hon Winston Peters, Leader of the New Zealand First Party (at that time the junior coalition partner), stated that New Zealand First was uncertain whether it would continue to support the National Party in government, in light of the change in the National Party leadership. On 16 November 1997, Mr Peters announced that his party would remain in coalition with National, led by Mrs Shipley as Prime Minister. Mr Bolger resigned on 8 December and I appointed Mrs Shipley to the office of Prime Minister on that date. In appointing Mrs Shipley, I observed the established convention that the Governor-General appoints as Prime Minister the person who appears able to command the confidence of the House. In this case, I was satisfied (on the basis of public statements in the media and Mrs Shipley's own assurances) that she did command that confidence, and I appointed her accordingly.
From my perspective - that is, the constitutional perspective - those are the essential facts. Of course, a great deal of political discussion and negotiating went on during that time. But the politics were not my concern. Constitutionally there was a reasonably orderly transition from one Prime Minister to the next. Although Mr Bolger lost the support of his colleagues, there were no other indications that the National/New Zealand First Coalition Government as a whole had lost the confidence of the House.

Change from Coalition to Minority Government - August 1998

The second political event occurred in August of this year, when the coalition between National and New Zealand First broke down, and the National-led Minority Government was formed. Again, I shall briefly set out the facts that were significant to me in my role as Governor-General.

On the evening of 12 August 1998, I was advised that a serious dispute had arisen between the Coalition Government partners, following a special Cabinet meeting that had been convened that evening to discuss the sale of Wellington Airport. On the morning of 14 August, the Prime Minister gave me formal written advice to dismiss Mr Peters from his Ministerial responsibilities as Deputy Prime Minister and Treasurer, and from the Executive Council, and in accordance with that advice I did so. On 19 August the Coalition parties agreed in writing that the Coalition Agreement would terminate in seven days’ time (that is, 26 August). I accepted the resignations of three further New Zealand First Ministers over this period. On 30 August the Prime Minister announced the composition of the new National-led Minority Government, and the next day there was a swearing in ceremony at Government House at which, on the Prime Minister’s advice, four new Ministers were sworn in and various portfolios were reallocated. On 8 September the Prime Minister moved a confidence motion in the House which the Government won.

This description omits a great deal of political negotiating and intrigue that would be included in breathless detail if I were a political commentator. But from my perspective, the political events were relevant only to the extent that they might have brought into question the Government’s majority on questions of confidence and supply. My fundamental concern was to ensure that I was never without responsible advisers who enjoyed the confidence of the House.

The Confidence of the House

You will have noticed that throughout my description of events, the issue of the confidence of the House appears as a constant refrain. In an MMP environment, votes of confidence may become more important than they have been in the past, because the political groupings are likely to be more varied and fluid. I therefore wish to take this opportunity to talk briefly about votes of confidence and their importance.

The notion of the confidence of the House is fundamental to the democratic process. Whichever grouping of the Members elected to Parliament can command the support of the House on matters of confidence and supply (which I will deal with shortly) has the democratic mandate to govern and accordingly forms the Government.
Once the Government establishes the support of the House at the beginning of its term, it retains the confidence of the House, unless some event or series of events brings that support into question. From time to time, however, the Government faces (or declares) votes of confidence. The significance of these votes is that the Government stands or falls on the outcome.

As Mr David McGee, Clerk of the House, has outlined in his book, a confidence vote may take several different forms. It may be initiated by the Government, which may move a vote of confidence or declare a particular Bill to be a matter of confidence. It may also arise independently of the Government, in two circumstances. First, the Opposition may initiate a motion expressing want of confidence in the Government. (However, the opportunities for doing so are quite limited under Standing Orders, because there are few debates which are so wide in scope that an amendment declaring that the Government has lost the confidence of the House is in order). Second, votes on Appropriation Bills or Imprest Supply Bills automatically raise questions of confidence, because obtaining Parliament's authority to expend money (i.e., obtaining supply) has always been viewed as fundamental to the survival of the Government.

I have mentioned that the Government is presumed to maintain the confidence of the House unless some event or series of events brings that support into question. As Governor-General, I must be comfortable that I am continuing to act on the advice of responsible Ministers who enjoy the confidence of the House. Where that support becomes unclear, therefore, the politicians have a duty to clarify within a fairly short timeframe - allowing a reasonable period for negotiation and reorganisation - where the confidence of the House lies.

Politicians may assist during a time of political uncertainty by indicating publicly where they stand in terms of their support for the Government. A vote of confidence is nonetheless the more critical indicator.

Assessing the Confidence of the House during the Coalition Breakdown

To return to the events of August, I can confirm that I remained comfortable that the Government retained its majority throughout that period.

First, there were two votes of confidence that formed the "bookends", if you like, of the Coalition breakdown.

The timing of the first of those votes (the passage of the Imprest Supply and Appropriation Bills through the House on 11 August) was determined by the Parliamentary calendar rather than the politicians, and occurred immediately before the political climate became stormy. For that reason, the value of those votes in demonstrating the confidence of the House lessened as the political ground shifted.
The timing of the second vote of confidence meant that it had more significance, because it followed the change in the composition of the Government. On 8 September (eight days after the swearing in of the new minority administration) the Prime Minister, of her own initiative, moved a vote of confidence in the House. In passing the motion, the House expressed its confidence in the new minority coalition Government.

In initiating this vote of confidence, the Government acted responsibly and democratically. Its legitimacy which might otherwise have been open to question - was established beyond doubt. In my view the Government's decision to test the confidence of the House at an appropriate time established an important precedent that will provide sound constitutional guidance to political leaders confronted by the same situation in the future.

Between the two confidence votes, there were several weeks of political uncertainty. I was assisted considerably during this time by statements made by the politicians. As the political landscape changed, the Prime Minister indicated publicly at regular intervals that she had assurances of support from the majority of Members of Parliament. She communicated this vital message both publicly, through statements in the House of Representatives and interviews with the media, and privately to me through official channels.

The Leader of the Opposition said publicly during the events of August that if the minority Government proved unsustainable, she would not wish to try to form a Government, but would prefer an election. Had the minority Government failed to obtain the confidence of the House, that indication would have been pivotal in my mind in determining whether to allow an opportunity for an alternative government to be formed or whether an election should be called.

Other politicians too made helpful public statements. Some stated whether or not they supported the new minority Government. All of these comments helped to give me a clear picture of the constitutional situation as the political negotiations progressed, without any need for involvement on my part.

The political players knew their parts and played them well. If we look at this event from a constitutional (rather than political) standpoint, any question of a crisis was avoided, and there was an orderly transition from coalition Government to minority Government.

Key Messages

So far, so good. But rather than simply congratulate those who got it right, I would like to take this opportunity to reinforce some key points that emerge with some force from the political events that I have just set out.

The first is that the resolution of a mid-term political crisis is the responsibility of the politicians, who have a duty to demonstrate and communicate where the support of the House lies. They are also responsible for ensuring that the Governor-General, as the Head of State's representative, is able to remain politically neutral, and is protected from the need to make what is, or may be seen to be, a political decision.
In practical terms, this means that during any period of political uncertainty, it is helpful for political leaders to state publicly their positions in respect of support for the Government. Their comments are constitutionally significant, because they may in some situations need to be relied upon.

I must also emphasise the value and importance of votes of confidence. A vote of confidence in the House of Representatives is the ultimate test of a Government's mandate to continue in power. However a vote of confidence may arise - by implication (as with a supply Bill), on the motion of the Opposition, or by the declaration of the Government - its outcome will determine whether the Government has the support of the House at that time. Votes of confidence are therefore of critical importance.

The Role of Governor-General in a Mid-term Political Crisis - Key Principles

I turn now to the role of the Governor-General during a mid-term political crisis. I hasten to add that I do not intend to offer an analysis of the reserve powers of the Governor-General, or to provide a detailed plan for every conceivable contingency. As the late Professor Quentin-Baxter said in his well-known 1980 article:

"It is unnecessary, and it would be foolhardy, to try to state definitively issues about which a great and unresolved controversy has raged or simmered for more than a hundred years. It is enough to identify features that emerge with some clarity from the smoke of the battlefield."

Both encouraged and cautioned by those words, I have given considerable thought to the essential principles that would guide me in my role as Governor-General in a time of political crisis. The "features that emerge with some clarity from the smoke of the battlefield" are as follows:

- A political crisis is a matter for politicians to resolve and should not require any intervention or comment on my part.
- Throughout any political crisis, I will in the ordinary course of events act on the advice of the Prime Minister so long as he or she appears to command the support of the House of Representatives.
- If the support of the House becomes unclear, I am dependent on the political parties represented in the House to clarify, within a reasonably short timeframe, whether the Prime Minister continues to enjoy that support, through political discussion and accommodation.
- If the Government loses the support of the House, the Prime Minister will either indicate a readiness to resign (which means the resignation of all Ministers) or seek a dissolution. In the interim, before an alternative administration is appointed or an
election held, I expect that the incumbent Government would operate in accordance with the caretaker convention.

You may have noted the similarity between these guiding principles and those that I have identified as relevant to the government formation process. This consistency shows that at the heart of my role is one simple principle: that in a parliamentary democracy, the exercise of my powers must always be governed by the question of where the support of the House lies.

Conclusion

There ends my "magical demystification tour". It is my hope and my intention that the messages and the principles that I have articulated today will provide useful information and practical guidance (both to the public and to the constitutional players themselves) at any time in the future that political crises may occur.

I will conclude with a quote from the Rt Hon William Ewart Gladstone, Liberal Prime Minister in Britain in the late 1800s. Mr Gladstone once wrote that the British Constitution "presumes more boldly than any other, the good sense and good faith of those who work it". That statement applies just as forcefully to the New Zealand Constitution in 1998 and is, perhaps, the most useful guidance of all.

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