This is the full text of the original typewritten document, signed by my father, Eugene Forsey, with the date, August 15, 1984, also written in his hand, that I found among his papers after his death in 1991. I have copied it here exactly, with his formatting and underlining; the only change I have made is to flag with asterisks three segments which are less directly relevant to our current situation, and place them at the end.

Helen Forsey

Position of the Governor General if No Party gets a Clear Majority in the Election

Eugene Forsey

I have been asked what the Governor General does if no party gets a clear majority (more than half the seats in the House of Commons) in the general election.

I. The answer is, "Nothing".
The incumbent Prime Minister has a choice between two courses:

a) He can resign. The Governor General then sends for the Leader of the Opposition, and asks him to form a government.
b) He (the incumbent Prime Minister) can meet the new House of Commons. If it supports him, he remains in office. If it defeats him, he resigns, and the Governor General sends for the Leader of the Opposition.

This is what happened in Britain in 1886, 1892 and 1924.* In Canada, in 1926, Mackenzie King (who had been defeated in his own constituency, as had eight of his Ministers) had come out of the election of 1925 with 101 seats to the Conservatives' 116 (in a House of 245). He met the new House, and, till late in June, was sustained by it.

The Government in office, even if it has fewer seats than the official Opposition, is entitled to meet the new House, and let it decide whether to keep that Government in or throw it out.

There is no reason at all for any intervention by the Governor General. Indeed, any such intervention would be grossly improper.

It is not the business of the Governor General to decide who should form the Government. It is the business of the newly elected House of Commons.**

II. If no party gets a clear majority in the election, and the incumbent Government decides not to resign (as it has a perfect right to do) but attempts to carry on for an extended period without meeting the new House (financing the country's business by means of Governor General's special warrants, as provided for in the Financial Administration Act, Section 23), then, at some point, Her

Excellency would have the right, indeed the duty, to insist that Parliament should be summoned; the right, the duty, to refuse to sign any more special warrants till it was summoned. She would have to say:

> "Prime Minister, responsible cabinet government means government by a cabinet with a majority in the House of Commons. I don't know whether you have such a majority. No one knows. The only way to find out is by summoning Parliament and letting it vote. If you will not advise me to summon Parliament forthwith, then I shall have to dismiss you and call on the Leader of the Opposition. It is not for me to decide who shall form the Government. But it is for the House of Commons. I cannot allow you to prevent the House of Commons from performing its most essential function. To permit you to do that would be to subvert the Constitution. I cannot allow you to usurp the rights of the House of Commons."

I have said, "for an extended period", and "at some point". What period? What point?

There can be no precise answer. How many grains make a heap? But if, let us say, for three months, or four, or five, or six, the newly elected Parliament had not been summoned, at some point there would most certainly be a public outcry:

> "Here! What's going on? Responsible government means government by a cabinet with a majority in the House of Commons. Has this Government, which is spending millions of public money, a majority in the House of Commons? The only way to find out is to summon Parliament and let the House vote. If this Government won't advise that action, then we'd better get a Government that will, and get it quick, and it's the duty of the Governor General to see that we do get it. Her action is our only protection against a gross violation of the very essence of our Constitution."

I must emphasize that the courts could do absolutely nothing.

I must emphasize also that, in law, the Government could stay in office, and finance the ordinary business of government by Governor General's special warrants, for a very long time. True, it would have to summon Parliament within twelve months of the last sitting of the previous Parliament. But, having done so, it could then prorogue it, after a session of a few hours, and repeat the performance a year later. (Indeed, it could dissolve Parliament after a session of only a few hours, as Mr. King did on January 25, 1940.) The only protection against such conduct is the reserve power of the Crown, the Governor General, to refuse such prorogation or dissolution, and, if necessary, to dismiss the Government which advised such prorogation or dissolution. ***

(signed) Eugene Forsey
August 15, 1984

* In each case (Salisbury in 1886 and 1892, Baldwin in 1924. Salisbury was defeated in the newly elected House in 1886 and 1892, and Baldwin Salisbury was defeated in the newly elected House in 1924.)

** Immediately after the election of 1972, when for a few days, it looked as if the Conservatives would have 109 seats to the Liberals' 107, there was a considerable chorus of voices claiming that the Governor General should call on the Conservative leader, Mr. Stanfield, to form a Government. This would have necessitated his dismissing Mr. Trudeau. Every constitutional authority would agree that there could be circumstances which would warrant the Governor General's exercising his "reserve power" to dismiss a Government. But no constitutional authority would say this was one of such circumstances.

If, in 1972, Mr. Stanfield had in fact won 109 seats to Mr. Trudeau's 107, the Governor General would have had no warrant whatever, no right whatever, to usurp the authority of the House of Commons to decide which of the two should be Prime Minister.

If the Governor General, after the election of 1925, had dismissed Mr. King and called on Mr. Meighen to form a Government, then, when the new House met, it might have defeated Mr. Meighen, and the Governor General would have been compelled to call on Mr. King. Meanwhile, the welkin would have rung, and properly so, with denunciations of the unconstitutionality of His Excellency's intervention, his usurpation of the rights of the House of Commons.

If, after the election of 1972, the Governor General had dismissed Mr. Trudeau and called on Mr. Stanfield, exactly the same results could have followed.

*** If anyone questions the word "millions" above, in relation to Governor General's special warrants, he or she need only look up the official records for the occasions when such warrants have been used (during an election) to finance the ordinary business of government to the tune of hundreds of millions of dollars. I myself heard Mr. Michener, a few years back, tell a Senate Committee that he had once signed a single special warrant for hundreds of millions (it was either $200,000,000 or $400,000,000; I can easily, if need be, find the precise figure in the Proceedings of the Committee).

I must also emphasize that we have, in Canada, nothing like the United Kingdom's Army and Air Force Annual Act, and that, since 1896, it has never been the custom to make the voting of interim Supply by Parliament a condition precedent to a dissolution of Parliament.

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Note: In his article "Crown and Commonwealth", Aug, 1973, re. the powerlessness of the courts in certain circumstances, Eugene Forsey writes:

"To some extent the House of Commons (even the Senate!) can protect the rights and liberties of the people, but only if there is some authority which can preserve the right of the people to appeal from either House or both."