THE CONSTITUTIONAL CONVENTION OF COLLECTIVE RESPONSIBILITY: WHAT IMPACT WILL CHANGES UNDER COALITION GOVERNMENT HAVE ON THE CONVENTION.

Public Law Research Paper

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I INTRODUCTION

> *"...if coalitions were ever to become frequent no doubt resignations would increase as well..."*[2]

The objective of this paper was to test a hypothesis, which is partially reflected in the above prediction, over the impact that the introduction of coalition government in New Zealand may have had on the constitutional convention of collective responsibility. While the particular source of that quote may have been from a time of stable single-party government, with near complete Cabinet control over Parliament, the sentiment behind the quote intuitively appealed.

The hypothesis that was set for this paper was that:

> *Under Coalition Government it is more likely that breaches of collective responsibility will occur, that these breaches will be more likely to be implicitly or explicitly accepted, and that breaches will be less likely to lead to sanctions. The lower likelihood of sanctions will reflect the political practicality of a greater dependence on member of Cabinet with divergent views under Coalition government and the mixed member proportional representation electoral system (MMP).*

This paper sets out to test the above hypothesis by describing in Part II the theory and background to the constitutional convention of collective responsibility. Part II draws upon international evidence about the existence of the convention. It also discusses the convention's reflection in New Zealand prior to the introduction of MMP in 1996, culminating with the Cabinet Office Manual's statement of how the convention applied.

Part III of this paper discusses the impact that the introduction of coalition government and MMP has had on the convention's status in New Zealand since 1996. Part III discusses commentary on the predicted impact of these changes, the reflection of the convention in the two coalition agreements entered into since 1996 and recent modifications to the Cabinet Manual to reflect the changing nature of the convention. It concludes with a summary of the impacts of these changes on the convention.

Part IV provides a framework for analysing the instances where the convention has been breached. This framework for analysis is based on a number of factors that can be ascribed, to varying degrees, to each breach. It also discusses the incentives for the enforcement of the requirement to resign, and the Prime Minister's power to dismiss, where a breach has occurred. Part V then applies this framework to the empirical evidence on breaches, which includes instances dating from 1932 to 1999, and under both single-party governments and coalition governments, as well as under the first-past-the-

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[2] John Roberts *Politicans, Public Servants and Public Enterprise: Restructuring the New Zealand Government Executive* (Victoria University Press for the Institute of Policy Studies, Wellington, 1987) 51.

post and MMP electoral systems.

Part V also includes a summary table, which attempts to ascribe values to factors present in each breach. This information is then used in Part VI to describe the trends that are identifiable from the evidence in Part V. These trends are analysed over three time periods: trends from 1932 to 1984; trends from 1984 to 1996; and trends from after 1996. Part VII provides concluding comments on the extent to which the hypothesis above is supported by the evidence analysed and the trends identified.

II THEORY / BACKGROUND

A The Convention of Collective Responsibility

The convention of collective responsibility underpins the functioning of Cabinet, within countries that have Cabinet systems of government, by ensuring that the Cabinet acts as one. Collective responsibility is generally viewed as involving the following three elements that lead to Cabinet acting as a united body:

- confidence – Parliament expresses its confidence in Cabinet collectively, through confidence votes, rather than expressing confidence in individual ministers;
- unanimity – Ministers must collectively support Cabinet decisions, irrespective of their own opinion on the matter; and
- confidentiality – Cabinet discussions should remain confidential.

Collective responsibility meets the definition of being a constitutional convention on the grounds that it is enforced through political institutions, rather than through legal mechanisms. Conventions are essentially facilitative mechanisms, without legal standing but with the ability to constrain actions through political means. As such they may be seen as pragmatic political rules, that reflect established political practice and precedent. This is clearly the view of Joseph, who went so far as to challenge the existence of the convention:[3]

> … the constitutional convention [of collective responsibility,] which the Prime Minister eagerly referred as justifying his ultimatum, and which the political scientists affirmed, is fictional. In New Zealand (and probably also the United Kingdom) the notion that Cabinet must stand as one on the policies it adopts has never been more than a rule of pragmatic politics.

Collective responsibility forms one of the non-binding rules by which politicians govern their own conduct. Collective responsibility is a prime example of this non-binding nature, as Cabinet or the Prime Minister may choose not to enforce the requirement to resign. By doing so, however, they will inevitably open themselves up to political scrutiny.

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[3] Philip A. Joseph "The Honourable D.F. Quigley's Resignation Strictly Political – Not Constitutional" (1982) 1 Canta L R 428, 429.

The key to the convention can be seen to be the need for unanimity within Cabinet. While the convention also involves the elements of confidence and confidentiality, these matters are also essentially reinforcements of the need for unanimity. If there is not unanimity, then the likelihood that Cabinet will be able to survive confidence votes will be decreased, due to the fractious nature of the Cabinet. Similarly, if the confidence element is not respected, then the appearance of unanimity may quickly be shattered, bringing into doubt the sustainability of the Cabinet.

The convention is a common feature of a number of countries that operate a cabinet system of government, irrespective of the actual structure of that cabinet system. In a study of the operation of cabinet systems of government Laver and Shepsle commented emphatically on the application of collective responsibility:[4]

> Obviously, if individual cabinet ministers can ignore cabinet decisions without this being realized, or even openly defy them, then they will be very powerful within their own departments, and collective cabinet decisions will mean very little. ... In the first place, it seems that it is not possible for a minister simply to ignore a significant cabinet decision relating to his or her department without this being realized and publicized, by either the media, the civil service, or cabinet colleagues. ... it is just not possible to ignore a collective decision made by the cabinet.
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> If, instead of ignoring a cabinet decision, a minister chooses to defy it, our authors are equally adamant about the consequences. The minister concerned must resign, or will be sacked.

Laver and Shepsle's study included descriptions of the operation of cabinet systems of government in a diverse range of countries. These included countries with varying degrees of Prime Ministerial or Presidential power, different proportions of ministers inside and outside of cabinet, and different coalition structures within cabinets and governments as a whole. This can be taken to reinforce the notion that collective responsibility will continue to have a significant role in New Zealand under coalition government situations.

B Breaches of the Convention and Sanctions

The above three elements operate in different manners, are binding in different manners and are capable of breach to differing degrees. The first element essentially requires that Cabinet as a whole must operate together, maintaining a sufficiently unified front that they are capable of ensuring that Parliament will support them when a confidence vote is called.

The situations in which a confidence vote can be called or where a matter will automatically be considered to be a confidence vote are limited. These matters primarily relate to situations where there is such a wide-ranging debate in Parliament that its

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[4] Michael Laver and Kenneth A. Shepsle *Cabinet Ministers and Parliamentary Government* (Cambridge University Press, Cambridge,1994) 297.

subject matter can be said to be fundamental to the credibility of the Government.[5] Examples of such matters include the Address-in-Reply and "supply" matters such as Appropriation Bills. In practice, confidence votes may also be proposed by the government, in order to signify the seriousness of a particular issue to the continuation of that government. As such, confidence votes may be used to ensure that "rogue" members of government parties, or other parties that support the government, do not vote against the government on a significant matter.

In practice, confidence reflects the support that members of the Government and any supporting parties have in the Cabinet members (and to a degree the control that those Cabinet members have over the members of their own parties). This element is, therefore, binding on Cabinet collectively and is enforced by Parliament collectively (although nominally by the Governor-General). The first element of the convention can not be breached, in the sense that the consequence of being unable to maintain collective confidence is that the Cabinet (and the Government from which they are drawn) must resign.

The second and third elements apply to Ministers individually rather than collectively. These elements are an integral part of the system of Cabinet controls that ensure Ministers act in a unified manner, so that confidence in the Cabinet and the Government is maintained. The sanction for breaches of these elements of collective responsibility is that the Minister concerned will be required to resign, with the corollary threat that if they do not resign then they may be dismissed. The Prime Minister acting to dismiss a Minister generally enforces the threat of dismissal. In the case of the current Labour / Alliance Coalition Government, the leaders of each of the Labour and Alliance parties are respectively responsible for dismissing Labour and Alliance Ministers who breach these elements of the convention.

This sanction will be enforced through political means, and is not a measure that can generally be enforced by others if the Minister concerned refuses to resign and the Prime Minister chooses not to dismiss the Minister concerned. These restrictions on enforcement apply equally to other Ministers who have been affected by the breach of collective responsibility, in the sense that their recourse is to politically attempt to require resignation or dismissal, rather than having other methods to require resignation or dismissal.

C Importance of the Convention

Collective responsibility fulfils a key role in the management of cabinet behaviour. In essence, it aims to foster collegial relations between ministers by ensuring that they are:

- informed about matters that other ministers are responsible for;
- able to debate and discuss matters of common interest; and

[5] David McGee *Parliamentary Practice in New Zealand* (2 Ed, GP Publications, Wellington, 1994) 70 – 73.

- responsible for collective decisions by virtue of their role in the decision making process.

Collective responsibility may appear to result in outcomes that are contrary to the individual interests of ministers in cabinets, especially where those ministers have strong personal views on matters or represent constituencies with divergent interests. Even in these circumstances, as James notes, collective responsibility is an essential mechanism to maintain effective cabinet government:[6]

> The rationale for this seeming absurdity is the need for the government to present a united front. If ministers may contradict each other in public and abide by some decisions but not others, confusion and division will soon set in. The position of a minister who is publicly criticised by his colleagues will become untenable, and a government whose policies are under fire from its own members will lose its authority. It is an illogical, even distasteful doctrine, but there is no practical alternative to it. Collective responsibility is an organised hypocrisy, but a necessary one.

The justification for ministers accepting this hypocrisy can be seen in the context of the range of matters that ministers are expected to bring before cabinet. A simple test for what matters a minister should seek collective agreement about is the objective question "would I wish to be consulted on this matter if another minister was responsible for it?" Each minister can expect, therefore, that they will need to seek collective agreement to matters within their nominal areas of individual responsibility. The incentive to comply with the requirements of collective responsibility, other than the sanctions for breach, is the recognition that each minister's behaviour may impact on how other ministers behave in relation to the areas of each other's responsibilities.

The nature of the incentives that serve to reinforce the need for collective responsibility can also be seen to question whether it is truly a constitutional question, consistent with Joseph's view discussed earlier.

D Reflection of the Convention in New Zealand

It is clear that these elements have formed part of the constitutional background in New Zealand for a considerable period of time. In 1962 Scott described the convention in the following way:[7]

> The doctrine of collective responsibility is the doctrine that every member of Cabinet must be willing to give public support to every policy that has been adopted by Cabinet; and that any minister who finds he is unable to do so must resign.

While the convention has formed a part of the New Zealand political scene for some time, it has more recently been formally reflected in a number of different ways. The first of these was through its adoption and modification in the Cabinet Manual.

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[6] Simon James *British Cabinet Government* (2 Ed, Routledge, London and New York 1999) 6 – 7.
[7] K. J Scott *The New Zealand Constitution* (Oxford at the Clarendon Press, 1962) 113.

E Cabinet Office Manual Prior to 1996

The Cabinet Office Manual, and any amendments by Cabinet Office Circular, has provides authoritative guidance on the expectations of the conduct of Cabinet since it was first compiled in 1949. The Cabinet Office Manual did not, however, refer to the requirement to resign until 1983,[8] shortly after the first enforced resignation under the auspices of collective responsibility in over 50 years.

The Cabinet Office Manual has been regularly revised since it was introduced, with a significant update occurring in 1996 in preparation for coalition government. The 1996 edition reinforced the importance of collective responsibility in the following section appropriately headed Collective Responsibility:[9]

> 3.4 Decisions at Cabinet and Cabinet committee meetings are usually reached by consensus. Votes are rarely taken. Once a decision has been made, however, it is to be supported collectively by all Ministers, regardless of their personal views and whether or not they were at the meeting concerned.
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> 3.5 The convention of collective responsibility is an essential underpinning of the system of Cabinet government, whereby Ministers are required to advise the Sovereign (in practice, the Governor-General) on matters of public importance. Ministers whose opposition to a Cabinet decision is such that they wish to publicly dissociate themselves from it must first resign from the Cabinet.

F Practical Impact of the Convention

The consequence of departures from the unanimity and confidentiality elements is that the minister who breaches the convention should resign or be dismissed. In reality, however, a number of factors will determine whether this occurs. It is also difficult, in this context, to separate actions during the process that leads to a Cabinet decision being made from the actions which follow that decision being made. While actions during the decision making process may more appropriately be viewed as being subject to the confidentiality element, the public voicing of opinions prior to a decision being made can signal an intention to breach the unanimity element.

III IMPACT OF THE INTRODUCTION OF COALITION GOVERNMENT AND MMP ON THE CONVENTION OF COLLECTIVE RESPONSIBILITY

The introduction of coalition government under the MMP electoral system in 1996 involved a significant change to the operation of governments in New Zealand. The moving from a system of single-party governments, to one where conflicting interests would need to be managed within a coalition government, was expected to place pressure on the boundaries of collective responsibility.

The introduction of coalition government also led to the introduction of coalition agreements. The two coalition agreements since 1996, those of the National/NZ First and

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[8] Gordon Campbell "Cabinet Making" The Listener, New Zealand, 11 December 1999, 16, 17.
[9] *Cabinet Office Manual*, Cabinet Office (1996) 36.

Labour/Alliance government, have taken markedly different approaches to how they dealt with the likely pressures on collective responsibilities.

This part discusses the following matters, to give further background into the discussion of evidence that follows in Parts V and VI:

- commentary on the likely impact of the introduction of coalition government;
- the National / NZ First coalition agreement;
- the Labour / Alliance coalition agreement;
- the revision of the Cabinet Manual in 2001;
- the current status of the convention of collective responsibility; and
- commentary from the Secretary of the Cabinet on the impact of coalition government on the convention of collective responsibility.

A Commentary on the Likely Impact of Coalition Government

Boston noted, prior to the introduction of coalition government, that while collective responsibility was likely to continue to underpin New Zealand's cabinet system of government there were also likely to be significant challenges for the members of those governments:[10]

> Collective responsibility is an important doctrine in all systems of cabinet government. This is hardly suprising because there are powerful political incentives for a government to present a united face to the country, and equally strong incentives for ministers to defend the government when it is under opposition attack. At the same time, disagreements between the coalition partners may well be aired more often in public than is the case with respect to factional disputes in single-party governments. Equally important, the doctrine of collective responsibility is likely to be severely tested in the period leading up to an election, since there will be strong political pressures for each party in the coalition to distinguish its policies and philosophy from that of its partners.

B National/NZ First Coalition Agreement[11]

The 1996 General Election resulted in a delicate balance of power being held by the NZ First party, with the parties of the left (Labour and Alliance) and the parties of the right (National and Act) unable to form a government without the support of NZ First. Negotiations over the formation of a coalition government focused on two-party coalitions between Labour and NZ First, and National and NZ First, with both coalitions

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[10] Johnathon Boston "The future of cabinet government in New Zealand: The implications of MMP for the formation, organization and operations of the cabinet" Working Paper Series 3/94 Graduate School of Business and Government Management (1994) GSBGM Research Publications Series, Victoria University of Wellington.

[11] Rt Hon .J B Bolger and Hon Winston Peters, This Agreement made this 11th day of December 1996 Between New Zealand First Political Party registered under the Electoral Act 1993 (hereafter referred to as 'New Zealand First") and the New Zealand National Party duly registered under the Electoral Act 1993 (hereafter referred to as National) (Wellington, 11 December 1996) (hereafter National/NZ First Coalition Agreement).

being capable of governing without the support of the respective minor parties of the left and right.

Public surprise greeted the formation of the National/NZ First coalition government, given that NZ First had campaigned against the policies of the National Party. This may have reflected the degree of policy commitment that was contained in the coalition agreement, as well as the number of ministers that NZ First were to have and the positions of Deputy Prime Minister and Treasurer that NZ First's leader, Rt Hon Winston Peters, was appointed to.

Significantly, for the purposes of this paper, the National/NZ First Coalition Agreement explicitly acknowledged the continuing relevance of collective responsibility, stating that "The established conventions of collective responsibility and confidentiality are accepted."[12] It also provided for the minimal change to the process of decision making, stating that "It is agreed that every endeavour shall be made for decision making in Cabinet to be on a consensus basis."[13]

The manner in which those conventions were intended to apply largely endorsed previous practice. as contained in the Cabinet Office Manual at that time:[14]

> All members appointed to the Executive shall … comply with the requirements of the Cabinet Office Manual (August 1996) and associated Cabinet Office circulars and will accept the conventions of Cabinet responsibility and Cabinet confidentiality save and except as otherwise provided for in this agreement.

While the National/NZ First coalition generally accepted collective responsibility, this needs to be viewed in the context of the degree of policy agreement contained in their coalition agreement. The specificity of the Schedule to that agreement had a significant impact on the dynamics of the cabinet process and the operation of collective responsibility.

By emphasising the value of stability of previous policy, unless there was subsequent amendments either through that Schedule or agreement in Cabinet, the negotiating positions of each party were constrained in advance. While NZ First opted for a degree of stability, requiring their support for previous National policy, the agreed positions in the Schedule also bound National to a significant proportion of NZ First's policy.

Any dispute between the coalition partners over policy in Cabinet would then need to be dealt with first by reference back to the Coalition Agreement and its Schedule. The provisions of the agreement dealing with coalition management indicated that the coalition was aware of the need to deal with disputes, including those that could challenge the agreed observance of collective responsibility.

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[12] National/NZ First Coalition Agreement clause 7.6.
[13] National/NZ First Coalition Agreement clause 7.5.
[14] National/NZ First Coalition Agreement clause 7.3(d).

C Labour/Alliance Coalition Agreement[15]

By contrast, the Labour and Alliance parties entered into a coalition arrangement extremely smoothly following the 1999 General Election. The smoothness of this process may have reflected a desire not to repeat the protracted process of three years prior, and an intent to have a less complex coalition agreement. The first of these elements may also reflected the relationship that existed between the coalition partners, having worked together as a virtual coalition opposition over the previous six years. The second of these elements may have reflected the degree of similarity between the positions of the Labour and Alliance parties on a number of key policy positions.

These similarities may have provided the Labour and Alliance parties with greater confidence to enter into a coalition agreement that reflected high level principles rather than specific policy commitments, leaving detailed policy positions to be negotiated within the Cabinet process and enforced through collective responsibility. The Labour/Alliance Coalition Agreement is merely 2 pages long and contains four key elements.

The most relevant element is the process for coalition management. This included the appointment of a coalition management committee and the endorsement of the continuing relevance of collective responsibility:[16]

> The coalition government will operate within the convention of collective cabinet responsibility, subject to the provisions of this agreement, and the expectation is that cabinet decisions will be taken by consensus.

The Coalition Agreement recognises, however, that there may be areas where the parties would not be able to agree and provides a process to deal with those situations: [17]

> Where either party leader considers that a distinctive policy matter raises an issue of importance to the party's political identity, the leader will raise this with the coalition management committee which will resolve an appropriate course of action, including possibly identifying the matter as one of "party distinction". In this event there may be public differentiation between the parties in speech and vote which will not be regarded as being in breach of the convention. Such issues are expected to be infrequent and the parties recognise that dealing with them openly and responsibly is critical to the credibility of the coalition. Differentiation on such issues will not detract from the overall acceptance that the two parties are taking joint responsibility for the actions of the government.

The remaining key elements in the Coalition Agreement are the broad objectives that the coalition government committed to operate under, the processes for the formation of policy that builds upon both parties electoral platforms and the number of Ministers that will be appointed from each party to the coalition.

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[15] "The Coalition Agreement between the Labour and Alliance Parties" 6 December 1999 (hereafter Labour/Alliance Coalition Agreement).
[16] Labour/Alliance Coalition Agreement, 1.
[17] Labour/Alliance Coalition Agreement, 1.

D Revision of the Cabinet Manual (2001)

The Labour / Alliance Coalition Agreement also signalled that a review of the Cabinet Office Manual would occur, stating that "The cabinet office manual will be reviewed within the first six months of office to ensure its procedures effectively facilitate the management of the coalition government."[18]

The intent was that this process would give effect to the convention, as it was recognised within the Labour/Alliance Coalition Agreement, however, the process of revising the Cabinet Manual proved to be both long and difficult. Rather than being completed within the first six months of the Government's term, it took from December 1999 until April 2001 for the completely revised Cabinet Manual to be produced and approved by Cabinet.[19]

The process of deciding on changes commenced with a Cabinet paper[20] on 13 December 1999, just one week after the Coalition agreement had been signed. Cabinet agreed to a recommendation inviting:[21]

> the Prime Minister, in consultation with other Ministers as appropriate, to review the Cabinet Office Manual, and report back to Cabinet no later than 30 June 2000, including in the report:
>
> i proposals for amending the current provisions in the Cabinet Office Manual concerning collective responsibility, to ensure that the collective responsibility provisions in the Cabinet Office Manual do not conflict with the "party distinction" process set out in the Coalition Agreement; …

The proposed changes were considered a number of times[22], before finally being agreed to by Cabinet on 27 November 2000.[23] Changes relating to collective responsibility

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[18] Labour/Alliance Coalition Agreement, 2.

[19] Although the provisions on collective responsibility were agreed to in November 2000 and actioned by way of Cabinet Office Circular – see n 24 below.

[20] Memorandum for Cabinet – Coalition Agreement Between the Labour and Alliance Parties and Cabinet Office Manual CAB (99) 781 (10 December 1999).

[21] Coalition Agreement Between the Labour and Alliance Parties and Cabinet Office Manual CAB (99) M 32/2 recommendation f (13 December 1999).

[22] The changes were first considered by Cabinet Policy Committee on 16 August 2000 (see *Cabinet Office Manual Review: Overview* POL(00) 96 (14 August 2000); *Cabinet Office Manual Review: Coalition Management* POL (00) 97 (14 August 2000); and Cabinet Office Manual Review POL (00) M 22/1 & 2 (16 August)), which referred consideration of the relevant papers to Cabinet. Cabinet considered those papers on 4 September 2000 (see *Cabinet Office Manual Review: Overview* CAB (00) 578 (31 August 2000); *Cabinet Office Manual Review: Coalition Management* CAB (00) 577 (31 August 2000); and *Cabinet Office Manual Review: Overview* CAB (00) M 29/11 & 12 (4 September 2000)), which deferred consideration of the papers to enable the Deputy Prime Minister to undertake further consultation with the Alliance caucus. Cabinet Policy Committee next considered these papers, including revised provisions on collective responsibility, and agreed on the relevant text to be inserted into the collective responsibility sections on 20 September 2000 (see *Additional Item: Power to Act: Cabinet Office Manual Review* CAB (00) M 31/10 (18 September 2000), *Cabinet Office Manual Review: Coalition Management: Collective Responsibility Text* POL (00) 97A (19 September 2000); and *Cabinet Office Manual Review: Coalition Management* POL (00) M 26/1B (20 September 2000)). The finalised text of these sections was considered by Cabinet Policy Committee on 22 November (see *Cabinet Office Manual: Revision of Chapters 1 to 3*

were, however, given effect to through a Cabinet Office Circular issued on 3 November 2000.[24]

The Cabinet Manual currently includes the following provisions that provide guidance over the rules under which Cabinet operates when making decisions, including provisions on collective responsibility that replicate the provisions of the earlier Cabinet Office Circular:[25]

> 3.20 The principle of collective responsibility underpins the system of Cabinet government. It reflects democratic principle: the House expresses its confidence in the collective whole of government, rather than in individual Ministers. Similarly, the Governor-General, in acting on ministerial advice, needs to be confident that individual Ministers represent official government policy. In all areas of their work, therefore, Ministers represent and implement government policy.
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> 3.21 Acceptance of ministerial office requires acceptance of collective responsibility. Issues are often debated vigorously within the confidential setting of Cabinet meetings, although consensus is usually reached and votes are rarely taken. Once Cabinet makes a decision, then (except as provided in paragraph 3.23) Ministers must support it, regardless of their personal views and whether or not they were at the meeting concerned.
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> 3.22 In a coalition government, Ministers are expected to show careful judgement when referring to party policy that differs from government policy. Subject to paragraph 3.23, a Minister's support and responsibility for the collective government position must always be clear.
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> 3.23 Coalition governments may decide to establish "agree to disagree" processes, which may allow Ministers to maintain, in public, different party positions on particular issues or policies. Once the final outcome of any "agree to disagree" issue or policy has been determined (either at the Cabinet level or through some other agreed process), Ministers must implement the resulting decision or legislation, regardless of their position throughout the decision making process.
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> 3.24 "Agree to disagree" processes may only be used in relation to different party positions. Any public dissociation from Cabinet decisions by individual Ministers outside the agreed processes is unacceptable.

E Commentary from the Secretary of the Cabinet

The comments of Boston that started this Part suggested that MMP and coalition government were likely to severely test collective responsibility. While that may have occurred during the term of the National/NZ First coalition government, that need not be the case. The view from of Marie Shroff, Secretary of the Cabinet is that, while coalition government may have increased the pressure on collective responsibility, this does not

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POL (00) 186 Rev 1(17 November 2000); and *Cabinet Office Manual: Revision of Chapters 1 to 3* POL (00) M 33/1 (22 November 2000)).

[23] These changes were finally endorsed by Cabinet on 27 November 2000 (see *Cabinet Office Manual: Revision of Chapters 1 to 3* CAB (00) 772 (23 November 2000); and *Cabinet Office Manual: Revision of Chapters 1 to 3* CAB (00) M 39/9 (27 November 2000)).

[24] Coalition Management – Amendments to Cabinet Office Manual CO (00) 10, Cabinet Office, Wellington (3 November 2000).

[25] Cabinet Manual, Cabinet Office (2001) Wellington.

mean that it can not be preserved:[26]

> The introduction of proportional representation in New Zealand increased the pressure on collective responsibility, because there are sometimes considerable incentives for smaller parties to let their constituencies know when they have fought and lost on a particular issue in Cabinet. …
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> On the other hand, collective responsibility – i.e. unitary government – remains a foundation stone of Cabinet government, even under MMP. …
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> The challenge, therefore, for those seeking stable coalition governments, is to find a line between the overall need for unitary government (via collective responsibility) and the needs of smaller coalition partners to retain their distinct identities.

Shroff cites the "agree to differ" mechanism adopted by the Labour/Alliance government as an example of how those pressures can be balanced:[27]

> The development of the "agree to disagree" mechanism in the Labour/Alliance coalition agreement is a response to the desire for small party branding of its policies. The Labour/Alliance mechanism provides for a relaxation of the unanimity principle, on rare occasions, within a constrained, transparent and carefully regulated context. Indeed, if Cabinet **agrees** to disagree, then the differentiation is arguably contained within the overall bounds of collective responsibility as the issues on which the parties may agree to disagree must themselves be collectively mandated.
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> I do not see the mechanism as an **erosion** of collective responsibility, although it certainly marks an evolution. It is even possible that collective responsibility will be strengthened as a result of the mechanism, because dissent by individual Ministers outside the authorised process is clearly not envisaged.

F Current Status of Convention of Collective Responsibility

The changes over the past five years have left some elements of collective responsibility undisturbed, while also subtly modifying the convention. The key element that has remained the same is the obligation on Ministers to resign where they wish to dissociate themselves from a Cabinet decision that they are unable to support, supported by the continued practice of Cabinet generally attempt to reach agreement on all issues.

The most significant change has been the formal introduction of the ability for Ministers to publicly disagree, albeit through the constrained methods of the "agree to disagree" mechanism. This mechanism is likely to be invaluable to the extent that it maintains individual parties' ability to have separate identity, effectively acting as a fuse-box preventing the complete melt-down of relations within a cabinet.

This mechanism is, however, cleverly tempered by the requirement that cabinet agree when to disagree, providing for the collective mandate of disagreement described by

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[26] Cabinet Office "Notes for Marie Shroff for Select Committee hearing" 16 March 2000.

[27] Shroff, Marie "*The Role of the Secretary of the Cabinet: The View from the Beehive*", Speech delivered at New Zealand Centre for Public Law, Victoria University of Wellington, 31 July 2001, pages 17 - 18. Forthcoming publication as NZCPL occasional paper.

Shroff. As such it may truly be seen as an evolution of collective responsibility, rather than a reduction.

IV FRAMEWORK FOR ANALYSIS

This Part examines breaches of the convention of collective responsibility against a range of factors identified below, in an attempt to describe either the reasoning for the doctrine being enforced or for a breach being tolerated. The focus of the paper is on breaches of the unanimity element of the convention, as the element that most commonly is breached or appears under threat of breach.[28]

A Framework for Analysis and Methodology

This section attempts to establish a framework for analysing the enforcement of the convention of collective responsibility by identifying evidence that can support general statements about the politics of enforcing this convention. The framework and methodology used is similar to that Laver and Shepsle applied in analysing the formation and maintenance of governments. The basic principle of Laver and Shepsle's analysis was as follows:[29]

> Our most fundamental premise is that it is possible to make general statements about the politics of building and maintaining a government, and that such general statements can give us valuable insights into the political processes involved.

B Factors for Analysing Breaches of the Convention

The framework that utilised builds upon work of Alderman and Cross[30] on the factors that may influence a Minister's choice over whether they resign or the Prime Minister's decision over whether they dismiss. Alderman and Cross discussed these factors in the context of threats by a Minister that they will resign, in an attempt to achieve an outcome that a Minister is supporting. They are equally applicable, however, to a Minister's actions beyond the point at which a decision is taken, in terms of their carrying out a threat to speak against a collective Cabinet decision. Once the Minister acts upon their

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[28] The unanimity element can, however, come under threat of breach contemporaneously or in connection with threats to breach the confidentiality element. For example, following Douglas' resignation in 1988, he released Cabinet papers without authorisation. Such a situation where both elements are breached is most likely to occur where a Minister is unable to support a Cabinet position and releases papers in an attempt to gain greater support for the position that they have taken. Where Minister has already resigned or been dismissed, and they then breach the confidentiality element, there are unlikely to be any clear sanctions for their breach – see (1989) 500 NZPD 11702 where the then Attorney General Rt. Hon Geoffrey Palmer stated in response to an oral question "In any event, the actions of a former Cabinet Minister in disclosing Cabinet minutes are unlawful in the sense that to do so breaches the constitutional convention of Cabinet confidentiality. Such a disclosure may well be actionable in the civil law, but that does not mean that it is an offence for which a prosecution could be bought."

[29] Michael Laver and Kenneth A. Shepsle *Making and Breaking Governments: Cabinets and Legislatures in Parliamentary Democracies* (Cambridge University Press, Cambridge, 1996).

[30] R.K. Alderman and J.A. Cross *The tactics of resignation: A study in British Cabinet Government* (Routledge and Kegan Paul, London, 1967).

threat they are bound by the Convention to resign or can be dismissed by the Prime Minister.

The factors are:

- *relative indispensability* – the more senior a Minister is the greater the latitude they will have to challenge policy within Cabinet, to threaten to breach the unanimity element and to survive a breach of that element;
- *external indispensability* – a Minister's value to the Cabinet based upon the importance of their constituency to the Cabinet may influence their ability to threaten to breach the convention, especially where their constituency has a significant interest in the issue over which the Minister is making the threat;
- *colleague's belief in the seriousness of the threat* – Ministers will have greater latitude where they threaten to breach the convention over an issues which they have a significant stake in or where the other members of Cabinet are convinced of the seriousness of their threat (either because the Minister does not lightly make threats of that nature or because they have carried out such threats in the past);
- *group threats or repeated threats* – a group of Ministers who collectively make a threat may have greater power to survive the breach of the convention or to negotiate a right to breach (for example, the "agree to disagree" agreements). Alternatively, a Minister may utilise repeat threats over a particular issue to demonstrate the seriousness of those threats or the significance of their beliefs in that issue, so they can survive the actual breach;
- *ability to enlist outside support* – a Minister may have greater latitude to breach the convention where they are able to generate significant external public support for their position, especially where that support is wider than their own constituency; and
- *circumstances and timing* – Ministers may also be able to survive breaches where they make the breach in circumstances that are acceptable to Cabinet (for example, by floating their own concerns over Cabinet's decision where Cabinet itself is relatively divided over an issue, or where there is a strong sense of morality involved in the issue). Alternatively, the timing of a breach within the electoral cycle may make it more acceptable (for example, where it is part of the positioning of Coalition partners on policy issues immediately after or prior to an election, when partners are tussling to exert their influence or to position themselves for future influence.)

C Enforcement

A key factor, which is not clearly addressed above, is whether the requirement to resign will be enforced by the Prime Minister, or whether will Minister feel significantly compelled to voluntarily resign. In that context, whether resignation is required or dismissal will occur is likely to be affected by the personal style of the Prime Minister, which has a significant impact on the extent of behaviour that is acceptable, and the Party that is in Government.

Rather than attempting to control for the personal style of different Prime Ministers and administrations, this form of analysis enables the focus to be on the characteristics of

behaviour. This form of analysis should enable consideration, under the last of the above characteristics, of the impact of 'political realities'. These are, in practice, more likely to impact on the likelihood that certain behaviour would be subject to the sanction of resignation / dismissal than the other variables that can be assigned to the behaviour.

The difference in methods of electing Cabinet members for the Labour and National parties will also be considered, due to the impact this difference has on the practicalities of enforcement by the Prime Minister of the obligation to resign. Labour Prime Ministers can generally be seen to be more constrained due to the fact that their caucus can re-elect a Minister that has been dismissed by the Prime Minister, whereas National Prime Ministers have more power over the membership of their Cabinet.

In addition, consideration will be given to the extent to which a potential future breach has been explicitly sanctioned in advance within Coalition Agreements, or the Prime Minister's ability to dismiss has constrained. As examples of this, the Labour/Alliance Coalition Agreement provides the "agree to disagree" mechanism, as well as specifying that the power to dismiss Alliance Ministers resides with the Alliance Party Leader rather than the Prime Minister.

Finally, it should be noted that while the convention is theoretically applicable to all Ministers, there may be difficulties in enforcing it where the Minister who breaches the convention is also responsible for its enforcement, in their role as Prime Minister. James, in the context of Margaret Thatcher's loose observance of the convention in the United Kingdom remarked that "The Cabinet is not just a mechanism for taking decisions: it is a means for nurturing political loyalty between colleagues. The Prime Minister, as chairman and leader, cannot afford to neglect this side of its work … ."[31]

This suggests that while there may be practical difficulties in enforcing the convention against the Prime Minister, due to their position as first among equals, it should still be considered to be binding on them. Ultimately, the sanction for the Prime Minister who breaches the convention repeatedly may be, however, essentially political in nature, as members of their own party seek to restrain their actions in other ways.

V EMPIRICAL EVIDENCE

The evidence described in this Part should provide valuable insights into the likely method in which the convention will be enforced in the future. While the introduction of coalition government has modified the political landscape markedly, it should still be possible to make predictions about how the convention will be enforced in the future based on previous behaviour.

Part VI draws general statements from the evidence presented in this Part. It does, however, attempt to also recognise the changes that coalition management processes will have had on how the convention will be enforced in the future.

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[31] Above n 6, 187.

A Division of Evidence

Instances of breaches of the convention have been identified both from texts and newspaper reports, dating back to 1932. Some of the actions identified fall into what will be described as "grey areas" where it is unclear whether the convention has been breached, and hence whether the sanction of dismissal would be appropriate (for example, unauthorised statements prior to Cabinet decisions being taken). The observations are broken into the following time periods:

- evidence from prior to 1984
- evidence from the Labour Government 1984 – 1990
- evidence from the National Government 1990 – 1996
- evidence from National / NZ First Coalition Government 1996 – 1998
- evidence from National / Mauri Pacific Minority Coalition Government 1998 – 1999
- evidence from Labour / Alliance Minority Government 1999 – 2001

These breaches are then examined in Table One to identify the extent to which the following characteristics (discussed in the previous section) form a part of the breach or the individual Minister (or Ministers) who committed the breach:

- indispensability – including both relative and / or external indispensability;
- nature of the breach – including colleague's belief in the seriousness of the threat, and whether the threat is a group threat or repeated threat;
- ability to enlist outside support; and
- circumstances and timing.

B Evidence Prior to 1984

Seven clear examples of breaches of the convention can be identified in the period prior to 1984. Both of the first two breaches involved the then Minister of Finance Hon. William Downie Stewart.

1 Downie Stewart

The first of these breaches, in 1932, involved Downie Stewart's disagreement with Cabinet's decision to reduce rents and interest rates. This breach occurred against a back-drop of Downie Stewart having successfully spoken against a reduction in rents and interest rates the previous year, at the time that wages had been reduced.

In the case of this breach, Downie Stewart not only disagreed with the Cabinet decision during Cabinet consideration, but also criticised the policy publicly following that decision and voted against the policy when it was put into place through the National Expenditure Adjustment Act. This departure from the convention is particularly notable for the fact that Downie Stewart was, as Minister of Finance, responsible for this area of policy. Downie Stewart did not resign, and there was a subsequent public announcement made that Cabinet had 'agreed to differ' in relation to this policy.

An examination of this breach suggests that Downie Stewart's successful breach of the convention occurred for the following reasons. First, as Minister of Finance Downie Stewart occupied a senior position within the Forbes Coalition Government, being the 3rd or 4th ranked Minister. His position was, therefore, strengthened by the potentially serious consequences of the Forbes dismissing him, in terms of the significant embarrassment that would have caused the Government (although Downie Stewart's breach in itself was also a cause of significant embarrassment to the Government).

Second, Downie Stewart's previous opposition to this and connected policies probably strengthened his position, in terms of his threat to breach the convention being more credible with his colleagues. Downie Stewart had consistently spoken against measures taken in response to the serious economic conditions at that time. In particular, Downie Stewart had argued for relief for a range of lower income earners, during a period where the Government had pursued policies that were reflected in the Arbitration Court ordering a reduction in wages of 10%. The key issue for Downie Stewart appears to have been the need to respond in a fair manner to the Government deficits that were caused by the Depression.

Finally, Downie Stewart's position was also strengthened by the fact that he was the sole urban Minister in a coalition Cabinet dominated by country Reform Party Ministers. As such, his presence in the coalition Government was beneficial for maintaining a more representative Government, due to the support that he may have been able to bring from urban constituents.

These factors can collectively be seen as having contributed to the compromise solution of the announcement that Cabinet had 'agreed to differ' in relation to this policy. Without such a solution being reached, the embarrassment to the Government would no doubt have been significantly greater.

The second clear breach of the convention by Downie Stewart occurred in 1933, and related to his disagreement with the raising of the exchange rate and the granting of indemnities for banks against the impact of the exchange rate changes. This policy was a response to the lack of profitability of the farming sector, following the Depression, and aimed to respond to low export prices by raising the exchange rate from 110% to 125%.

Again, this breach is notable for it falling ostensibly within the realms of Downie Stewart's responsibilities. On this occasion Downie Stewart chose to resign in accordance with the convention. Following his resignation on 28 January, Downie Stewart not only spoke at length in opposition to the policy[32], but also voted against the second reading of the Bank Indemnity (Exchange) Bill.[33]

While this appears to demonstrate the seriousness of Downie Stewart's concerns over the economic, wages and incomes policies of the Forbes Government, it highlights the fact

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[32] (1933) 235 NZPD 63-9.
[33] Above n32, 236.

that where a Minister's concerns are sufficiently serious, then they will eventually be forced to carry out a threat to resign to demonstrate the seriousness of their view. In other words, where a Minister is unable to muster sufficient support, either within Cabinet, the Government or publicly, to justify their position, then unless there are other extenuating circumstances, they will be forced to resign.

It is interesting to note that, in respect of Downie Stewart's breaches of the convention, Scott noted that the agreement to differ could be "regarded as a constitutional experiment that was unsuccessful and is unlikely to be repeated."[34] Subsequent events have, although many years later, demonstrated the political desirability of not only providing for an agreement to disagree, but also of formally elevating that to be potentially the most significant tool for managing the pressures of Coalition Government.

2 Algie and Broadfoot

Following Downie Stewart's breaches there was a significant period where the convention does not appear to have been seriously challenged. The next instance of a breach of the convention was by the then Minister of Education Hon. Ronald Algie[35] in 1953. Again, this breach related to the Minister's own portfolio, and in this case involved Algie arguing in the Address-in-Reply debate for the raising of a special loan for educational purposes[36], which Cabinet had already disagreed with.

Later in that year, a further breach of the convention occurred when the Postmaster-General, Hon. Walter Broadfoot[37], voiced his disagreement with transfer of certain profits of the Post and Telegraph Department to the Consolidated Account. Once again, this breach involved a Minister disagreeing with policy in the area of their own portfolio responsibilities, with Broadfoot voicing his disapproval on the occasion of his introducting of the Post and Telegraph Amendment Bill.[38]

Following these breaches neither Algie nor Broadfoot resign, and neither Minister was dismissed by the then Prime Minister, the Rt. Hon. Sid Holland. This can be seen as being largely a consequence of the circumstances in which the breaches occurred, as neither Minister argued their position strenuously. Rather, the breaches appear to have been minor expressions of frustration over the Ministers failing to convince their colleagues to agree with their positions. Scott notes that these breaches did "little or no harm"[39] as they merely represented a manifestation of the Ministers' enthusiasm for their own departments. This suggests that these breaches can be viewed as having been

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[34] Above n 7, 115.
[35] 5th ranked Minister in Holland's National Government.
[36] Algie considered that a loan was necessary to adequately meet the rapidly growing needs of the education sector, including to provide for capital expansion – (17 April 1953) 299 NZPD 122-5.
[37] 8th ranked Minister in Holland's National Government.
[38] Broadfoot considered that insufficient money had been set aside over a period of time by the Post and Telegraph Department for renewals of its networks, which had resulted in the Department needing to borrow a considerable amount of money – (16 October 1953) 300 NZPD 1879.
[39] Above n 7, 114.

implicitly sanctioned as a consequence of their colleagues acknowledging their significant interest in the policies which affected their own departments.

3 Goosman

The next incidence of breach of the convention involved the then Minister of Works, Hon William Goosman[40], who in 1957 expressed his disagreement with allocation of radio time prior to an election to the Social Credit party, on the basis that he considered their policies were "*unsound*."[41] Goosman had spoken against Social Credit's policies at length during the Address in Reply debate, particularly in relation to their economic policies and their view of the operation of the banking system.[42]

Goosman did not resign, claiming that he was expressing a personal opinion rather than breaching the convention. This breach, and the matter that it related to, can potentially be seen as being implicitly accepted by the then Prime Minister Holland, due to its timing before the election. While Goosman was claiming personal opinion, this opinion would no doubt have been beneficial to the Government, in terms of its being part of the normal criticism of other parties' policies which accompanies most elections.

This suggests that Goosman may also have been able to survive this breach based on his having some degree of ability to enlist external support. While it is patently undemocratic to suggest that another political party should be handicapped in their attempts to publicise their policies, Holland could have suffered far greater consequences had he chosen to dismiss Goosman for the breach of the consequences and then made similar criticisms of the Social Credit Party as a part of his own electioneering.

4 Couch

Following Goosman's breach, there was again a significant period of time where the convention does not appear to have been significantly challenged. The next clear instance of a breach involved the then Minister of Maori Affairs and Police, Hon. Ben Couch[43], who in 1981 openly opposed the Government policy of discouraging sporting contacts with South Africa.

Couch's statements included criticism of the State Services Commission's policy of refusing to grant leave to public servants to play sport with South Africans, a policy which was intended to give effect to the Government's commitment to the Gleneagles agreement on sporting contacts with South Africa.[44] Couch's position was criticised as

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[40] 5th ranked Minister in Holland's National Government.

[41] Scott paraphrases as "nonsense [that] if put into practice would ruin the country" – see above n 7, 114.

[42] (20 June 1957) 311 NZPD 201-5.

[43] 18th ranked Minister in the Muldoon National Government.

[44] Couch did, however, voted for a number of Government motions relating to the giving effect of the Gleneagles agreement. Notably one of these simultaneously recognised the Government's disapproval of the NZRFU allowing the tour to go ahead, as well as acknowledging that the Government would grant visas to the South African rugby players and encouraging any protestors to only undertake "peaceful protest" – see (19 June 1981) 437 NZPD 602-28.

being contrary to the Government's position by the then Minister of State Services, Hon David Thomson. However, the then Prime Minister, Sir Robert Muldoon, did not request Couch's resignation.

This breach of the convention may have been tolerated for a range of reasons, including the strong sense of personal morality involved in Couch's views on both apartheid and sporting contacts with South Africa. Muldoon had also previously personally supported Springbok tours, so dismissing Couch for expressing his personal opinion may have involved some risk that Muldoon would have been criticised for hypocrisy (notwithstanding the fact that he could have justified his actions as being required by the convention, and his own support for the Government's policy as being required for the same reason). Finally, the overall diversity of public opinion over the appropriateness of sporting contacts with South Africa probably contributed to a view that some disagreement within Cabinet was acceptable (as a reflection of society itself).[45]

5 *Quigley*

Shortly after Couch's actions, Muldoon was less accommodating in relation to a breach by the then Minister of Works and Development, Hon. Derek Quigley[46], in 1982. Quigley criticised the Government's 'Think Big' policy on infrastructure development a number of times, including in a speech to the Young Nationals. Following this Quigley choose not to act on Muldoon's request that he attempt to stop the Dominion newspaper from publishing the text of his speech, and then defied Muldoon in appearing on the *Newsmakers* television programme to justify his earlier statements in the Young Nationals speech.

Muldoon requested a public apology from Quigley, and indicated that unless he apologised he would be required to resign. Quigley chose not to resile from his statements, instead resigning on 14 June 1982.

While Quigley's resignation at the time was consistently described in newspaper reports as being a consequence of collective responsibility, there are a number of factors that suggest it Quigley's actions may not have amounted to a breach of the convention.[47]

The first factor is whether Quigley's speech actually challenged the fundamental policy elements that had been agreed to by Cabinet, or if it simply focussed on a lack of clarity over what was meant by "Think Big". Quigley also discussed whether the overall focus of the government's growth strategy required the continuation of the level of state

[45] For the differing views see "Labour Calls For Mr Couch To Go Or Be Dropped" New Zealand Herald, Auckland, New Zealand, 17 June 1980, page 5, section 1; "Mr Couch Faces Cries of 'Racist'" New Zealand Herald, Auckland, New Zealand, 20 June 1980, page 1, section 1; and "Mr Couch Wins Sympathy From Majority of Letter Writers" New Zealand Herald, Auckland, New Zealand, 20 June 1980, page 20, section 1.

[46] 10th ranked Minister in Muldoon's National Government.

[47] This view was also publicly stated by members of the National Party machinery at the time of Quigley's resignation – see "Quigley 'Sacking' Has Party in Turmoil" New Zealand Herald, Auckland, New Zealand, 16 June 1982, page 1, section 1.

intervention in the economy that was present at that time, and the consistency of "Think Big" with differing levels of state intervention.[48] These comments are similar in nature, therefore, to those a year earlier of Couch over apartheid and the Springbok rugby tour, in terms of their reflecting public debate and uncertainty.

The second factor relates to the strained nature of the relationship between Quigley and Muldoon at the time, due to Quigley's participation in a failed leadership challenge against Muldoon in 1980. Muldoon's perception that Quigley's actions amounted to a direct challenge to his authority, given Muldoon's personal connection to 'Think Big', combined to make Quigley's continued presence as a Minister untenable after the breach.

In combination, these factors would support the view that Quigley's resignation was not a clear-cut case of collective responsibility being breached. Ultimately, Quigley's stance was probably justified by the effective dismantling of the "Think Big" projects and the dramatic shift away from that form of State intervention in the economy that occurred over the following 15 years. Quigley's stance can also be seen as reflecting a personal opinion that may have been justified on the grounds of his ability to enlist outside support for his position (based on the key position that economic and social policy played in both the 1981 and 1984 elections).

C Evidence from Labour Government 1984 – 1990

Perhaps remarkably the Labour Governments of 1984 to 1990 enjoyed a number of years without any clear breach of the convention. The relative unanimity of this Government is interesting given the rapid degree of policy change that occurred during the first term of the Rt. Hon. David Lange's administration, under the then troika of finance related Ministers, Hon. Roger Douglas, Hon. Richard Prebble and Hon. David Caygill.[49]

The appearance of unanimity can, however, be viewed largely as an illusion masking the struggles that were occurring within Cabinet, but behind the mask of collective responsibility. A number of times during this period Lange strongly emphasised the value that the Labour Cabinet placed on the convention of collective responsibility.[50] The mask was eventually shattered, however, by a number of breaches of the convention, in reasonably rapid succession and all related to economic policy issues.

1 Lange

The first breach of the convention is interesting, as it involved the then Prime Minister Lange. In his now famous "tea-break" speech of 28 January 1988, Lange publicly

[48] "Mr Quigley's Resignation Major Crisis For National" New Zealand Herald, Auckland, New Zealand, 15 June 1982, page 1, section 1.

[49] Respectively 4th, 5th and 7th ranked Ministers in the Lange Labour Government.

[50] In response to an oral question from Doug Kidd on 19 November 1987, Lange stated that the convention of collective responsibility continued to apply to the Labour Cabinet – see (1987) 484 NZPD 1135. On 7 September 1988 Lange issued a press release again stating that Labour Ministers agreed to be bound by Cabinet decisions and the principles of collective responsibility – see reference in an oral question by the then Hon Bill Birch, (14 September 1988) 492 NZPD 6525.

announced deferral of the Government's flat-rate tax policy. This policy had been agreed to by Cabinet, partially as a response to the economic conditions after the 1987 stock-market crash and partially as a part of the package of ongoing economic reforms, and announced on 17 December 1987. Lange's deferral of this policy occurred prior to any Cabinet reconsideration of the policy, during the Parliamentary Christmas recess.

This breach is most interesting due to the fact that it was the Prime Minister who breached the convention. It raises, therefore, the interesting issue of who would be able to enforce the requirement of resignation following such a breach. In this context, Lange's seniority meant that he was able to breach the convention, so long as he was still supported in his position as Prime Minister. Ultimately, this breach was sanctioned retrospectively by Cabinet, although it led to a very public airing of the differences between the Cabinet members and threatened to bring down the Government.

2 Prebble

The next possible breach of the convention occurred during the power struggle within the Labour Government's Cabinet that followed Lange's statement. While the flat-tax policy had been deferred, the overall economic policy of the Government continued to involve ongoing economic reforms including proposals for a number of further sales of State Owned Enterprises within the 1988 Budget.

Prebble, as the Minister of State Owned Enterprises, had been responsible for the process of giving effect to those sales, and had been provided with relatively wide ranging powers for that purpose. However, there was growing opposition to the proposed sales, and Prebble eventually made rather severe criticisms of the process within which it was proposed that he should be required to consult with the Labour Party policy committee over asset sales, rather than just his Cabinet colleagues.[51]

At the time of Prebble's criticism, the proposal was one that had been made by Lange and the Deputy Prime Minister, Rt. Hon Geoffrey Palmer, but was still subject to Cabinet consideration. In the media coverage that followed, both Lange and Prebble breached at the very least the confidentiality element of collective responsibility, although to some extent these at least some of these breaches appear to have been sanctioned.

Given that the Cabinet had not reached a final position on this matter, it is difficult to argue that Prebble categorically breached the unanimity element of collective responsibility. Rather, it could be argued that Lange was in breach, as he was advocating very publicly a position that was contrary to earlier Cabinet agreements, even if he was actively seeking to overturn those earlier decisions within the bounds of initially confidential Cabinet proceedings.

Lange replaced Prebble as Minister of State Owned Enterprises with Hon. Stan Rodger on 4 November 1988. Prebble's response to his replacement was to personally criticise

[51] "5.15pm: 'I Am Surprised' – Prebble" New Zealand Herald, Auckland, New Zealand, 5 November 1988, page 9, section 1.

Lange's performance as Prime Minister, and authority to dismiss him over a refusal to comply with the Prime Minister's proposals on asset sales.[52] Lange dismissed Prebble as a Minister the next day, subsequently giving as the reason for Prebble's dismissal the fact "that, after consultation, we were unable to agree about the execution of the responsibility [that Prebble had as Minister of State Owned Enterprises]."[53] It was unclear, therefore, whether Prebble's dismissal should be seen as a consequence of collective responsibility or merely a pragmatic response by Lange to a difficult situation that had developed within the Cabinet and wider Labour party.

This breach highlights the fact that both group and repeat threats to the unanimity of Cabinet may ultimately require dismissal of a Minister, where the position they are taking is suggestive of an intent to breach the convention even if it is not clear that a breach has actually occurred. In part, the direct challenge to Lange in itself involved a challenge to his indispensability as the most senior Minister, and forced him to act in a manner that would maintain both his internal and external support (rather than strictly acting to enlist outside support).

3 Douglas

In the month that followed the dismissal of Prebble further rifts opened between Douglas and Prebble, primarily over economic policy. These differences were largely rooted in Lange's over-turning of the flat-tax policy that Cabinet had endorsed the previous year. Douglas was also concerned by what he saw as Lange's over-ruling of the collective decision making powers of Cabinet, however, the final straw for Douglas was reportedly the refusal by Lange to re-new the employment of Douglas's press secretary.[54]

Following this Douglas publicly announced that he was no longer willing to work as a Minister under Lange. Douglas either resigned or was dismissed[55], and challenged Lange for the leadership of the Labour Party. Douglas' challenge was based on his views that Lange had undermined New Zealand's economic recovery and broken Cabinet collectivity.[56] Douglas's challenge was unsuccessful, with Lange retaining the confidence of the Labour caucus by a reasonably significant margin of 38 votes to Douglas' 15.

Douglas' resignation could be seen as an example of where a Minister resigned partially because could not agree with Cabinet. It would be more accurate, however, to describe

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[52] Interview by Prebble on *EyeWitness News* Television programme 4 November 1988. See also "The Sudden Decline , and Abrupt Fall, of Richard Prebble – The TV Interview That Triggered It" New Zealand Herald, Auckland, New Zealand, 7 November 1988, page 9, section 1.

[53] (8 November 1988) 493 NZPD 7682.

[54] "Labour's Day of Crisis: Lange Tipped To Hang On As Douglas Gets Dumped" New Zealand Herald, Auckland, New Zealand, 15 December 1988, page 1, section 1.

[55] Douglas indicated that he could no longer work under Lange was taken by Lange to be a resignation, and he indicated to the Governor-General that Douglas' Ministerial Warrant should be withdrawn. It is arguable, however, that Douglas had not actually resigned, and Lange's actions amounted to a dismissal, as they were generally reported.

[56] "Douglas Bid Always Against Heavy Odds" New Zealand Herald, Auckland, New Zealand, 15 December 1988, page 1, section 3.

this situation as being one where Douglas resigned due to his opposition to Lange's political management.

4 Lange

Following the relatively bitter infighting within the Labour Cabinet and caucus of 1987 – 1988, Lange's own position subsequently became untenable. This process culminated in Lange's resignation on 7 August 1989 from the position of Prime Minister and his replacement as leader of the Labour Party by his deputy, the Rt. Hon. Geoffrey Palmer.[57] These changes occurred in the context of Douglas returning to Cabinet, following a vote within the Labour caucus on 3 August 1989.

The re-election of Douglas placed Lange in an unenviable position, where he was faced with significant future conflict within Cabinet and would have been operating from a position of reduced indispensability. Rather than face the inevitable conflict with Cabinet decisions that may have been more driven by Douglas than himself, Lange choose to resign. His resignation outside Cabinet can be viewed as a form of anticipatory action, taken to remove him from the position where he would face a choice over whether to breach the unanimity requirement of collective responsibility or resign.

There is a theme, however, of political pragmatism to Lange's resignation that suggests it was not simply about observance of collective responsibility, and the avoidance of future conflict. Lange was also acting loyally to his party, and the vision that he saw New Zealanders had given Labour a mandate to enact in the 1987 election. Lange thought that by resigning he would ensure that the Labour Party would support Palmer over Douglas as his replacement, and ultimately he was correct.[58]

D Evidence from National Government 1990 – 1996

Following the election of the National Government 1990, the then Prime Minister, the Rt. Hon. Jim Bolger, faced almost immediate challenges to the convention. These challenges involved the then Minister of Maori Affairs, Hon. Winston Peters[59], who repeatedly criticised the economic and social policy of the Bolger Government on the grounds that it was inconsistent with the Government's election manifesto.

These challenges occurred against a background of significant tension between Bolger and Peters, which had been ongoing for a number of years. Peters had been a popular opposition Member of Parliament, out-polling Bolger as preferred Prime Minister during the latter stages of the 1987 – 1990 Labour Government.

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[57] "Palmer Looks Likely: Deputy PM has edge as Lange steps down" New Zealand Herald, Auckland, New Zealand, 8 August 1989, page 1, section 1. See also (8 August 1989) 500 NZPD 11697-700.
[58] Pat Booth "Why David Lange Had To Go", North & South, New Zealand, September 1989, 53.
[59] 18th ranked Minister in the Bolger National government.

1 Peters

Bolger eventually dismissed Peters in a minor Cabinet re-shuffle on 2 October 1991, stating that his actions had been necessary due to Peters' continued behaviour being "inconsistent with continued membership in the Cabinet and inconsistent with the convention of collective responsibility among Cabinet Ministers."[60]

Peters' response to his dismissal was to challenge the tenets of Cabinet responsibility, claiming that "the first principle of Cabinet responsibility should be to abide by the manifesto."[61] His interpretation of collective responsibility, described as a "novel constitutional argument"[62] by one commentator, was that there was a distinction between constitutionally correct governments and democratic government. Peters justified his breaches of collective responsibility as being necessary to remain consistent with the democratically derived mandate that the government had based on its manifesto. Peters had also claimed that he was not constrained by any pre-conditions over his appointment as a Minister.[63]

Bolger's decision that Peters' unwillingness to abide by the core practical requirement for Ministers was sufficient to justify dismissal illustrates pure political pragmatism. This can be characterised as a situation where repeat threats to the unanimity of Cabinet ultimately required the dismissal of a Minister, similar to Prebble's dismissal by Lange. It also re-emphasised that challenges to the Prime Minister's authority and the unity of Cabinet may be tolerated, however, only to a certain extent.

Deeper insight into the political elements behind Peters' behaviour and dismissal inadvertently comes from Peters himself. Speaking of a challenge over his loyalty to Cabinet, shortly before his dismissal, Peters said:[64]

> My challenge to them was, 'Which one of you guys thinks you're bringing more votes to this party? You're not prepared to answer that question. That's the test. Am I costing this party votes, or aren't I?' And that's of course where they're hopelessly silent.

This illustrates that Peters viewed his position as a Minister as being a purely political decision, based on his value to the party as a vote-drawer. His view understated, however, the fact that a purely political decision could also be made by Bolger that the value of those votes was not sufficient to justify Peters' continued undermining of collective responsibility.

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[60] (2 October 1991) 519 NZPD 4639-60.

[61] "Peters vows to overturn Richardson's policies" The Dominion, Wellington, New Zealand, 3 October 1991, 1.

[62] Anthony Hubbard "The Winston of our Discontent" The Listener, New Zealand, 11 November 1991, 22, 23.

[63] "Fearless and outspoken loner pays the price" The Dominion, Wellington, New Zealand, 3 October 1991, 8.

[64] See n 62 above, 22-3.

E Evidence from National/NZ First Coalition Government 1996 – 1998

The 1996 election was the first conducted under the MMP voting system, which has largely been described as a reaction to the successive policies of Labour and National governments between 1984 and 1993. The announcement of a coalition government between National and NZ First[65] was, therefore, greeted with some surprise, in light of Peters' opposition to Bolger's National Government's policies following his dismissal as a Minister in 1991 (as discussed above).

The National/NZ First Coalition Agreement attempted to describe how the convention of collective responsibility would operate within the new territory of coalition government.[66] As discussed in Part II, this Coalition Agreement provided a reasonably detailed outline of understanding between the coalition parties over the policy direction that they would follow, including the specification of a large number of very specific policy initiatives that would be undertaken and provision for reviews of policy areas within tightly defined parameters.

This appears to be based on an attempt to circumscribe the areas where potential breaches of the convention may have otherwise arisen, although the Coalition Agreement also specifically provided a mechanism for dealing with serious disputes between the coalition parties. This dispute mechanism had the potential to remove the need for Ministers from either party to breach the convention. However, it is clear from the construction of the dispute mechanism that it was envisaged that it would be invoked before Cabinet had actually made a decision. Rather, it would operate where there was an area of serious disagreement between the coalition parties to enable them to end the Coalition Agreement, without having to breach the convention.

1 Peters[67]

Perhaps suprisingly, given their previous relationship, clear breaches of the convention did not occur while Bolger and Peters were the leaders of the coalition parties. However, following the Rt. Hon. Jenny Shipley's successful leadership challenge against Bolger, the relationship between the coalition parties became increasingly strained. Eventually the relationship deteriorated to the point that Shipley invoked the dispute mechanism within the Coalition Agreement on 12 August 1998 in relation to the proposed sale of the Government's shares in the Wellington Airport.[68] Central to this issue was Peters' fierce

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[65] *Statement by Rt Hon J B Bolger - Leader of the New Zealand National Party*, Press Release, New Zealand Government (10 December 1996) <http://www.executive.govt.nz/93-96/minister/pm/pmn1012.htm> (last accessed 3 October 2001). See also "It's National!" The Dominion, Wellington, New Zealand, 11 December 1996, 1.

[66] Although coalition government had been present within New Zealand previously, there had been a period of 61 years between the previous coalition government in 1935 and the National/NZ First Coalition government in 1996.

[67] 2nd ranked Minister in the Bolger/Peters and Shipley/Peters National/NZ First coalition government.

[68] "Shipley now running a minority government" The Dominion, Wellington, New Zealand, 13 August 1998, 1. See also (13 August 1998) 570 NZPD 11367-84.

opposition to overseas investment, and the fact that the proposed sale was to a consortium involving overseas investors.

Shipley had provided a hint that Cabinet could proceed with the sale, notwithstanding the views of Peters[69], when she earlier defended the process of collective cabinet decision making:[70]

> Government is not on the veto of one or two. Government is on the majority. The majority agreed that we would go into a process. Cabinet will consider the conclusion of that process…

Shipley took Peters' actions to amount to a refusal to be bound by a Cabinet decision over the proposed sale, a decision that was reached after his walk-out. The process of Cabinet taking a decision in the absence of all NZ First Ministers was stated by Shipley to be consistent with the principles of Cabinet Government, with her opinion being based on advice from the Solicitor General and the Cabinet Secretary. Shipley stated that the advice provided to her was: [71]

> … that the Coalition Agreement does not override the principles of Cabinet government. It sets out a series of understandings between the parties at the time the Coalition and how the parties intended to apply them.
>
> Departure from the terms of the Coalition Agreement indicates no more than a political difference and certainly does not put at issue the integrity of the Cabinet decision-making process.

While the dispute mechanism was ostensibly intended to act as an alternative to Ministers potentially breaching the unanimity element, in this case Shipley responded to Peters' repeated statements and actions, following the invoking of the disputes mechanism, by dismissing him from his position as a Minister on 14 August 1998.[72] Key to Peters' dismissal was his walking out of a Cabinet meeting to discuss the sale, along with three other NZ First Ministers, and subsequent criticism of Shipley's actions during the Cabinet decision making process.

Shipley clearly cited, in a letter to Peters, that his breach of collective responsibility was her reason for the dismissal:[73]

> It is my view that you have shown a refusal to accept Cabinet collective responsibility. Further, you have publicly criticised Government policy regarding the sale of the Crown's

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[69] *PM's Conduct in Question*, Press Release, New Zealand Government (13 August 1998) <http://www.executive.govt.nz/speech.cfm?speechralph=28079&SR=0> (last accessed 3 October 2001).

[70] "Coalition scrambles for airport face-saver" The Dominion, Wellington, New Zealand, 11 August 1998, 1.

[71] *Procedures Legal*, Press Release, New Zealand Government (13 August 1998) <http://www.executive.govt.nz/speech.cfm?speechralph=25792&SR=0> (last accessed 3 October 2001).

[72] "Shipley goes head-hunting" The Dominion, Wellington, New Zealand, 15 August 1998, 1. See also (18 August 1998) 571 NZPD 11401-29.

[73] *Dismissal of Rt Hon Winston Peters*, Press Release, New Zealand Government (14 August 1998) <http://www.executive.govt.nz/speech.cfm?speechralph=25790&SR=0> (last accessed 3 October 2001).

> shareholding in Wellington Airport, and your actions and statements regarding the sale (which expressly or impliedly deny the right of the purchaser to rely on a sales process of integrity) are unacceptable. Further, your unfounded allegations in Parliament that I have breached some alleged undertakings make it untenable for you to remain as a Cabinet Minister.

The actions of Shipley can be understood from two perspectives. Once the dispute mechanism had been invoked, and it appeared likely that the Coalition would be dissolved, Shipley had to respond to Peters' actions for political reasons. In the absence of the Coalition Agreement, a refusal to participate in the Cabinet decision process, or to be bound by that process, would have been tantamount to a major breach of the unanimity element. Given the seriousness of the threat, Shipley's own position within Cabinet and the National Party would have been severely weakened had she not dismissed Peters. This point was reflected in Shipley's public statements that she could not "be Prime Minister of [New Zealand] and have [her] integrity brought into question."[74]

Perhaps more important, the political position of NZ First (and in particular it's Ministers other than Peters) was precarious. Support for the party had slumped following its entering into coalition government with the National party, and there had been in-fighting between members. It was unclear whether a new government would have been able to be formed following the dissolution of the coalition, or whether a new election would have been needed.

This position combined to reduce the indispensability of Peters and contributed to Shipley's being able to form a subsequent coalition government with the NZ First politicians who formed Mauri Pacific.

2 *Donnelly, Morris and McDonald*

Peters' dismissal and the subsequent demise of the National/NZ First coalition government resulted in three pre-emptive resignations by NZ First Ministers. These can be viewed as being far more a consequence of the break-up of the coalition than any breach of collective responsibility, and as such can be characterised as demonstrating the influence that political realities have on resignations.

They are discussed here, however, as Shipley partially used the guise of enforcing collective responsibility to elicit these resignations. In a press release announcing Peters' dismissal Shipley had reinforced the continuing need for the government to operate under the principle of collective responsibility. Shipley had stated that she had:[75]

> ... the responsibility to the country to ensure that Cabinet was able to perform its functions and duties in accordance with the important principle of collective responsibility. That was critical in maintaining public confidence in executive decision-making and the reputation of New Zealand. ... I have asked [all other Ministers of New Zealand First] to meet me and to give me a personal commitment that they understand the obligations of

[74] See n 72 above.
[75] See n 72 above.

> collective responsibility and to give me an undertaking they are willing to comply with those obligations.

Shipley's ultimatum resulted in the resignations of three NZ First Ministers, Hon Deborah Morris[76] on 18 August 1998[77], and Hon Brian Donnelly and Hon Robyn McDonald[78] on 26 August 1998.[79] These resignations can be seen as an indication that these Ministers were no longer willing to be bound by collective responsibility. The latter resignations are overshadowed by the fact they occurred on the day that the National / NZ First Coalition Agreement was dissolved, reflecting those Ministers' primary choice to no longer be a part of the Government with National.

F Evidence from National/Mauri Pacific Minority Coalition Government 1998 – 1999

Following the formation of the National/Mauri Pacific minority coalition government, Shipley was again involved in a confrontation which ostensibly resulted in the dismissal of a Minister for breaching collective responsibility. This instance involved the exercise of Hon Tuariki Delamere's[80] powers as the Minister of Immigration.

1 Delamere

Delamere, as Minister of Immigration, had a reasonable degree of personal power in relation to the consideration of individual applications for residence under the Immigration Act 1987. This personal power needed, however, to be exercised in a manner consistent with collective responsibility and any parameters that Cabinet may have collectively placed on its use.

Delamere's breach involved a situation where he gave a direction that a permanent resident application be approved for reasons that were contrary to Government policy. While this may be seen as a matter that is ostensibly within the bounds of individual ministerial responsibility, the conflict with Government policy meant that the decision should have been considered in a collective forum. In announcing Delamere's dismissal, Shipley reinforced this, stating that "Mr Delamere's own department advised him that he was effectively creating new policy. He can not create new policy without the sanction of Cabinet."[81]

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[76] 22nd ranked Ministers in the Shipley/Peters National/NZ First coalition government. Morris was, however, a Minister outside Cabinet.

[77] *Resignation of Deborah Morris*, Press Release, New Zealand Government (18 August 1998) <http://www.executive.govt.nz/speech.cfm?speechralph=25786&SR=0> (last accessed 3 October 2001).

[78] Respectively 21st and 23rd ranked Ministers in the Shipley/Peters National/NZ First coalition government. Both Donnelly and McDonald were, however, Ministers outside Cabinet.

[79] *Ministerial Arrangements Following Dissolution of Coalition Agreement,* Press Release, New Zealand Government (26 August 1998) <http://www.executive.govt.nz/speech.cfm?speechralph=25783&SR=0> (last accessed 3 October 2001).

[80] 19th ranked Minister in the Shipley National/Mauri Pacific minority coalition government.

[81] *PM Asks Governor-General to Withdraw Delamere's Warrant*, Press Release, New Zealand Government (24 November 1999) <http://www.executive.govt.nz/speech.cfm?speechralph=30102&SR=0> (last accessed 3 October 2001).

In this context, it is interesting to note that Delamere was dismissed solely from his position as Minister of Immigration. He was not dismissed completely from his position in Cabinet, and retained his other portfolio responsibilities as Minister of Pacific Island Affairs, Associate Minister of Health and Finance, and Minister in charge of the Public Trust Office. By comparison, other dismissals or resignations have involved a complete removal from office. By allowing Delamere to remain in office, Shipley undermined the legitimacy of collective responsibility as the reason for dismissal.

The timing of Delamere's dismissal on 24 November 1999, three days before a general election, goes some way to explaining the Prime Minister's partial enforcement of her right to dismiss Delamere. This suggests that the dismissal was not motivated by a fundamental desire to enforce collective responsibility, but rather by an isolated desire to overturn Delamere's specific actions. Those actions had been subjected to significant public scutiny, based on claims that his approval of residence was racially discriminatory as it involved a requirement to invest in Maori businesses. This conclusion is reinforced by Shipley's request that Hon Wyatt Creech, the Acting Minister of Immigration, was asked "to look immediately at whether the approvals Mr Delamere had granted could be rescinded."[82]

G Evidence from Labour/Alliance Minority Government 1999 – 2001

The approach of the Labour/Alliance Coalition Government, following the 1999 election, to the convention of collective responsibility is markedly different. As discussed in Part III, the Labour/Alliance Coalition Agreement clearly sets out the intent of the government to be bound by the convention, however, the approach to 'sanctioned' breaches of the convention involves a return to the "agree to disagree" concept.

This concept has meant an increased focus on the coalition parties attempting to resolve their differences, with the consequence that breaches of the convention should be less likely. The potential relaxation of the unanimity element of the convention, where there is a Cabinet decision to do so, arguably reduces the possibility for clear unauthorised breaches to occur.

The potential for future breaches to occur does remain, although to date within the 22 months of the coalition government there have not been any clear breaches of the convention. The 'clean' record of the coalition government in this respect should, however, be viewed against a background of three factors. The first is the actions of the Prime Minister, the Rt. Hon. Helen Clark, and the Deputy Prime Minister, Hon. Jim Anderton, in dismissing Ministers, or accepting resignations, in other circumstances. These actions suggest that any significant breach of the convention would swiftly result in a request for a resignation or a dismissal.

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[82] See n 79.

This comment is reinforced by the responses of Clark and Anderton to several border-line breaches (or 'grey areas') by Alliance Ministers. Notable examples here are the reported comments of the Minister of Womens' Affairs, Hon. Laila Harré, in relation to paid parental leave policy, and those of the Minister of Corrections, and Disarmament and Arms Control, Hon. Matt Robson, on prison conditions and New Zealand's defence relationship with Australia. Harré's comments were swiftly responded to by a formal statement that the Minister had been speaking before Cabinet had reached a decision[83], effectively reducing any possibility of claims that Harré could have been accused of breaching collective responsibility. Robson's comments were effectively over-ruled by statements from the Prime Minister that he had been expressing a personal opinion rather than reflecting or disputing a Cabinet decision.[84]

The second factor is the manner in which the coalition government has handled changes to policies, after Cabinet has endorsed them. One example here is the changes that were made to the Employment Relations Bill while it was before select committee. At this stage in the process the convention requires that all Ministers publicly supported the Bill, however, Clark was quick to respond to criticisms of the Bill by stating that the Government would consider changes as a result of submissions to select committee.[85] This stance simultaneously indicates that the government is willing to listen to criticisms of its policies, yet Ministers' ability to agree that changes to policies are necessary is constrained by the need to seek Cabinet approval to changes to those policies.

Finally, it should also be noted that the coalition government has already exercised the 'agree to differ' mechanism in relation to the New Zealand / Singapore Free Trade Agreement. This occurred in September 2000, through the formal mechanism of Cabinet agreement that:[86]

> ... in accordance with agreed coalition processes, the Alliance will be free to differentiate publicly on the question of whether New Zealand should ratify this Agreement, until the outcome of the proposed parliamentary and Cabinet procedure for this matter is determined.

The constraints of the operation of this 'agree to differ' mechanism were clear, however, in the fact that the right of the Alliance to differentiate themselves was constrained by a

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[83] Comments suggesting a breach were attributed to Harré's in a Sunday Star Times article on 13 May 2001 (exact source unable to be located). These comments were, however, essentially retracted in a joint statement between Harré and Hon Michael Cullen, Minister of Finance on the same day. See *Timeline announced for Paid Parental Leave,* Press Release, New Zealand Government (15 May 2001) <http://www.executive.govt.nz/speech.cfm?speechralph=34635&SR=0>(last accessed 3 October 2001).

[84] "Vetoed Robson falls into line" The Dominion, Wellington, New Zealand, 10 April 2001, 2; "Review deals with disagreement" The Dominion, Wellington, New Zealand, 10 April 2001, 2.

[85] Source unable to be located.

[86] *Agreement between New Zealand and Singapore on a Closer Economic Partnership: Approval of Text,* CAB (00) M 30/8 (11 September 2000) recommendation h.

requirement that they "accept the outcome of the vote in the House (in terms of collective responsibility) for the final decision of Cabinet."[87]

This has obviously demonstrated the effect of this mechanism as a significant pressure control valve, which allows the venting of inevitable coalition pressures, and party distinction, without requiring the dissolution of coalition. The limited use of the mechanism has also reinforced that its value in resolving situations of dispute must not be diminished by overuse, to ensure that the coalition partners are always continuing to attempt to reach positions agreed by consensus.

The practical application of the 'agree to differ' mechanism is not, however, without its own constraints. The tight boundaries placed on the Alliance's ability to differ, in terms of being required to agree for Cabinet purposes to decisions of the House, suggest that the mechanism was used with an implicit understanding by the Alliance that they would be out-voted by the free-trade parties.

The retention of the ability to publicly maintain their position could, therefore, have been seen as a superficial victory for Alliance. This would be an unfortunate conclusion to draw, as it actually indicates the strength of wisely using a collectively mandated power to disagree in limited circumstances only. By requiring that Cabinet collectively endorse each agreement to differ, so long as Cabinet operates under a consensus decision-making rule, then Alliance Ministers will be required to agree to rules under which they differ.

The rule that they agreed to in the case of the New Zealand / Singapore Free Trade Agreement should be seen as an example of the terms that they may agree to in the future. In any situation where the Alliance Ministers are unwilling to agree to such a rule, then the principle that Cabinet should aim to operate by consensus will mean that further consultation or consideration will need to be given to either an agreed policy or an agreed 'agree to differ' mechanism. By being restrained in their use of this mechanism, the coalition government has effectively strengthened its credibility for those situations where it is used, as well as reinforcing the credibility of collective responsibility.

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[87] *New Zealand / Singapore Closer Economic Partnership: Signature of Agreement*, POL (00) 181 (7 November 2000) recommendation a(i) and *New Zealand Singapore Closer Economic Partnership: Signature*, POL (00) M 31/6 (8 November 2000) recommendation a(i).

Table One: Summary of breaches of convention of collective responsibility

Table One below discusses the overall nature of the breach, the factors identified in the framework for analysis (paragraphs xx to xx) and the nature of the response to the breach, identifying to what extent the response involved sanctions for breach occurring or acceptance of the breach.

Table One summarises the strengths of the various characteristics for each instance of breach ("+" signs indicate support for sanctions, whereas "-" signs indicate mitigation of the need for sanctions). The description of each breach concludes with a note of what the evidence on the relative strengths of these factors suggests should have been the expected response to each breach. This discussion also involves discussion of the extent to which the response to the breach was predominantly influenced by political considerations, testing the issue of whether any true prediction can be made of when sanctions should apply.

Details – Name, Date and Rank	**Dispute description – Nature of breach**	**Indispensability – relative or external**	**Nature of breach – seriousness, group or repeat**	**Outside support**	**Circumstances and timing**	**Nature of response – sanction or acceptance**
Downie Stewart (1932) 3rd/4th ranked Minister. Portfolio included Minister of Finance.	Downie Stewart argued in Cabinet against reduction in rents and interest rates. Subsequently voted against legislation in Parliament.	Relative indispensability high due to rank. External indispensability also high as sole urban Minister.	Repeat nature of threat indicated seriousness of concerns, having criticised economic policies repeatedly.	Outside support probably high as sole urban Minister.	Circumstances embarrassing to Government as Downie Stewart was responsible for this area of policy.	Breach accepted, with announcement Cabinet had 'agreed to differ'. This reflects similar solution in the United Kingdom in 1931.
	+++	--	+	--	+	**unclear**
Downie Stewart (1933) 3rd/4th ranked Minister. Portfolio included Minister of Finance.	Downie Stewart disagreed with raising of exchange rate and granting of indemnities to banks against impacts of increased exchange rate. Spoke publicly against policy and voted against legislation in Parliament.	As above.	Repeated threat again building on continued criticism of economic policy. Increased stakes given previous agreement to differ.	As above.	Repeat nature of breaches within portfolio area increased the embarrassing circumstances of this breach.	Resignation occurred in accordance with the convention. Probably forced due to unwillingness of Government to tolerate repeated breaches in a key area of portfolio responsibility.
	+++	--	++	--	++	**choice required**

Details – Name, Date and Rank	Dispute description – Nature of breach	Indispensability – relative or external	Nature of breach – seriousness, group or repeat	Outside support	Circumstances and timing	Nature of response – sanction or acceptance
Algie (1953) 5th ranked Minister. Portfolio included Minister of Education.	Algie argued in Parliament for raising of special loan for educational purposes. Cabinet had already rejected Algie's proposal.	Not clear factor. Reasonably highly ranked.	Breach not seen as being overly serious, rather more an indication of Alge's support for his department.	Not clear factor.	Circumstances possibly embarrassing to Government as Algie was responsible for this area of policy.	Breach accepted without resignation being required. Breach can be viewed as sanctioned, due to Algie's interest in matters affecting his department.
	+		-		+	**unclear**
Broadfoot (1953) 8th ranked Minister. Portfolio included Postmaster-General.	Broadfoot disagreed with transfer of profits from Post and Telegraph Department to Government, when introducing legislation to transfer profits.	Not clear factor. Reasonably highly ranked.	Breach not seen as being overly serious, rather more an indication of Broadfoot's support for his department.	Not clear factor.	Circumstances possibly embarrassing to Government as Broadfoot was responsible for this area of policy.	Breach accepted without resignation being required. Breach can be viewed as sanctioned, due to Broadfoot's interest in matters affecting his department.
	+		-		+	**unclear**
Goosman (1957) 5th ranked Minister. Portfolio included Minister of Works.	Goosman disagreed with allocation of radio time to Social Credit party, due to opposition to their policies.	Not clear factor. Reasonably highly ranked.	Breach not overly serious, as did not relate to a fundamental policy matter, rather a machinery of government issue.	Probably mitigating factor due to timing prior to election, and Goosman's criticism of Social Credit being beneficial to the Government.	Timing significant due to proximity to election, increasing ability of Goosman to survive breach. Goosman's justification on the basis that opposition was a personal opinion only is weaker.	Breach accepted without resignation being required. Breach can be viewed as sanctioned, due to nature of criticism and limited policy importance of subject matter.
	+		-	--	--	**sanctions not required**
Couch (1981) 18th ranked Minister. Portfolio included Minister of Police and Maori Affairs.	Couch opposed Government policy of discouraging sporting contacts with South Africa, including over the 1981 Springbok tour.	Not clear factor. Reasonably lowly ranked, although position as Minister of Maori Affairs may have had some impact due to racial nature of this issue.	Repeat breaches by Couch during a time of significant social unrest and division over both policy of discouraging sporting contacts with South Africa, and the Government allowing the 1981 Springbok tour to proceed.	Probably a mitigating factor due to level of division within society over both policy of discouraging sporting contacts with South Africa, and the Government allowing the 1981 Springbok tour to proceed.	Couch's position was probably strengthened by Prime Minister Muldoon's earlier support for Springbok tours. Couch's responsibility as Minister of Police for law and order during the tour probably caused embarrassment, due to high costs involved.	Breach accepted without resignation being required. Breach can be viewed as sanctioned, with division in Cabinet probably being seen as acceptable as a reflection of division in society on a largely moral issue.

Details – Name, Date and Rank	Dispute description – Nature of breach	Indispensability – relative or external	Nature of breach – seriousness, group or repeat	Outside support	Circumstances and timing	Nature of response – sanction or acceptance
	+		+	-	-	**unclear**
Quigley (1982) 10th ranked Minister. Portfolio included Minister of Works and Development.	Quigley criticised 'Think Big' policies on a number of occasions, finally in a speech to the Young Nationals. His challenge to a fundamental plank of National's economic growth strategy, which was a key Muldoon policy increased the seriousness of this situation.	Mid ranked Minister, although role as member of group of Ministers that had attempted to replace Muldoon as Prime Minister in 1980 suggests some internal relative indispensibility.	Repeat breaches by Quigley involved increased seriousness.	Probably a mitigating factor due to the lack of clarity within society over what 'Think Big' involved.	Timing of Quigley's breaches after 1981 election supported Muldoon's actions, in terms of claims that had a clear mandate for 'Think Big'. Quigley's involvement in attempted removal of Muldoon in 1980 may have affected response.	Muldoon requested that Quigley either apologise for his comments or resign. Quigley choose to resign, reflecting his conviction that there was not clear public support for 'Think Big'.
	+++	-	++	--	+	**choice required**
Lange (1988) Prime Minister.	Lange's breach involved his unilateral suspension of announced Government taxation and economic policy.	Lange had very high external and relative indispensability. As Prime Minister he had played a key role in the Labour Government's re-election in 1987. This is balanced by the fact that the economic reforms of Labour's first term had also been a key to their re-election.	Breach was extremely serious, due to its nature as a unilateral action in the Christmas Parliamentary recess. Its seriousness was compounded due to conflict it created within Cabinet, particularly with Douglas and Prebble.	Lange had very high levels of outside support, due to his position as leader of the Labour Party. Lange had support from the Labour caucus and the Labour extra-parliamentary party, as well as electoral mandate from the 1987 election.	The timing of the breach is significant as it related to a very recently agreed Cabinet position, which could be seen as broadly reflecting the economic policies that had recently been endorsed with Labour's re-election in 1987.	Sanctions were only available in this case through Cabinet reconsidering the issues or Caucus considering their ongoing support for Lange as Prime Minister. Cabinet ultimately retrospectively sanctioned Lange's breach, probably reflecting a perception of Caucus support for Lange.
	++++	----	++++	----	++	**choice should have been required but sanctions unavailable**

Details – Name, Date and Rank	Dispute description – Nature of breach	Indispensability – relative or external	Nature of breach – seriousness, group or repeat	Outside support	Circumstances and timing	Nature of response – sanction or acceptance
Prebble (1988) 5th ranked Minister. Portfolio included Minister of State Owned Enterprises.	Prebble's breach involved a refusal to be bound by processes over asset sales that had not yet been endorsed by Cabinet. Prebble's breach related to the confidence element of collective responsibility, and involved a challenge to Lange as Prime Minister.	Prebble was a reasonably highly ranked Minister, and as one of the Finance Ministers had reasonably high external indispensability, due to his association with the Douglas led economic direction of the Labour Party.	Prebble's breach may not have breached the unanimity element of collective responsibility, but it did seriously indicate that future challenges were likley. Combined with earlier disputes over economic policy it indicated an intent to breach that element, if Cabinet agreed to the proposed processes for asset sales.	Not clear factor. Prebble had high levels of outside support due to his association with the Douglas led economic direction of the Labour Party. Balanced against this was caution over Prebble within the Labour extra-parliamentary party.	Prebble's response to Lange removing him as Minister of State Owned Enterprises is probably the key factor explaining his dismissal. His removal can be viewed as a pre-emptive strike by Lange attempting to maintain collective responsibility. His dismissal was more a political necessity following Prebble's criticism of Lange.	Prebble's dismissal did not involve a clear request from Lange that Prebble either apologise or resign. Rather, it was clear and decisive response to a politically untenable situation.
	+	--	++		++	**political decision**
Douglas (1988) 4th ranked Minister. Portfolio included Minister of Finance.	Douglas' actions were pre-emptive rather than a breach. His actions were a response to his unwillingness to work under Lange's leadership. It reflected an unwillingness to continue to accept the economic policy direction Lange and Cabinet were taking.	Douglas was a highly ranked Minister, and as the Minister of Finance had very high external indispensability, based on the importance of economic policy to Labour's re-election in 1987.	Douglas' actions were notable for their seriousness, as evidenced by his challenging of Lange for the position of Prime Minister.	Douglas had a high degree external support, largely within the business community, based on his economic policy. Balanced against this was caution over Douglas within the Labour extra-parliamentary party.	Key to Douglas' actions and leadership challenge was its proximity to Prebble's dismissal. As such, it occurred in a backdrop of considerable Cabinet conflict over economic policy.	Douglas' actions were pre-emptive rather than a breach.
	+	--	+++	--	+	**political decision**
Lange (1989) Prime Minister.	Lange actions in this instance were similar to Douglas', being a pre-emptive resignation in response to what Lange saw as inevitable conflict with Cabinet following the return of Douglas.	Lange retained a high degree of external and relative indispensability as Prime Minister. This had been weakened, however, by in-fighting between Lange and Douglas.	Lange's actions were notable for their seriousness, as evidenced by his choice to resign rather than work with Douglas. He characterised this as indicating that Labour could not have it both ways – it was either Lange or Douglas.	Lange retained a high degree of outside support, but it had been reduced from its previous levels. This reduction can be seen in the fact that his support in Caucus was reduced, and Douglas' support had increased.	Lange's actions occurred four days after Douglas' return to Cabinet. Also significant was that Lange's actions were over 1 year before the next election, a time he viewed as long enough to allow a new leader to be prepared for an election.	Lange's actions were pre-emptive rather than a breach.
	+	-	++	-	+	**political decision**

Details – Name, Date and Rank	Dispute description – Nature of breach	Indispensability – relative or external	Nature of breach – seriousness, group or repeat	Outside support	Circumstances and timing	Nature of response – sanction or acceptance
Peters (1991) 18th ranked Minister. Portfolio included Minister of Maori Affairs.	Peters' repeatedly criticised National's economic and social policy as being contrary to its election mandate.	Peters had high external indispensability, based on his popularity in the 1990 election, and the support he generated amongst Maori.	Peters' breaches were both repeated, and increasingly serious. They involved direct challenges to both Cabinet unity and the Prime Minister Bolger's authority.	Peters had high levels of external support, having out-polled Bolger as preferred Prime Minister on numerous occasions.	Peters' dismissal occurred in the context of a minor Cabinet re-shuffle. It is notable that this occurred without Peters being given the clear opportunity to conform to collective responsibility, although he had indicated earlier his unwillingness to do so.	Peters' dismissal reflects the fact that the consequences of repeated breaches may be a swift sanction. This dismissal supports the view that the sanction can be used in an essentially political manner. In this case, allowing ongoing breaches by Peters was no longer politically acceptable, rather than response to one clear breach.
	++	--	++	--	+	**political decision**
Peters (1998) 2nd ranked Minister. Portfolio included Deputy Prime Minister and Treasurer.	Peters' and other NZ First Ministers vigorously opposed the proposed sale of Wellington Airport. This breach essentially involved a refusal to allow Cabinet to agree what to do over the sale of the Airport.	Peters had previously had relatively high external indispensability, due to National's dependence on him to maintain a coalition government. Reductions in support for NZ First and internal dispute had reduced this value significantly.	This breach was both serious in nature due to the significance of the issue and the public interest over the proposed sale. The group nature of the initial actions by NZ First Ministers also increased the strength of Peters' breach.	Support for Peters and NZ First had been significantly eroded, largely as a result of his entering into coalition with National. While his position had significant support, this was not likely to have been reflected in political support.	Key to Peters' dismissal was the low polling of NZ First and the internal disputes within NZ First. The invoking of the Coalition Disputes Procedure reinforced the seriousness of this situation, adding to an already deteriorating situation.	Peters' dismissal over this breach can be seen as strong reinforcing evidence for the importance of political considerations in decisions over whether sanctions are imposed. It also involved a clear situation of a challenge to collective responsibility, which justified dismissal.
	+++	-	++	-	++	**political decision / choice required**
Donnelly, Morris and McDonald (1998) 21st, 22nd and 23rd ranked Ministers.	These three Ministers acted in a pre-emptive manner, responding to the Coalition break-up by resigning as Ministers.	Not a clear factor.	The group actions of these three Ministers indicated the seriousness of their position, as did their withdrawal from Government as a part of the Coalition break-up.	Not a clear factor.	All three of these resignations occurred shortly after Peters was dismissed and Shipley asked for a pledge of support for collective responsibility. As such these resignations reflect an unwillingness to agree to such a pledge.	All three resignations can be seen as a consequence of the Coalition break-up, and the understandable consequences of Ministers having to resign in such a situation where they are a part of the departing portion of the coalition.

Details – Name, Date and Rank	Dispute description – Nature of breach	Indispensability – relative or external	Nature of breach – seriousness, group or repeat	Outside support	Circumstances and timing	Nature of response – sanction or acceptance
	+		+		+	**choice required**
Delamere (1999) 19th ranked Minister. Portfolio included Minister of Immigration.	Delamere's breach involved him exercising his individual powers as Minister of Immigration in a manner that was contrary to Cabinet policy.	Delamere had been relatively highly indispensable, due to his support for the minority coalition government. This factor had decreased due to the impending election.	Not a clear factor.	Not a clear factor. Delamere had very low levels of outside support, based upon his earlier choice to leave NZ First to be an independent Minister supporting the minority coalition Government.	Delamere's dismissal occurred only three days prior to the 1999 election. This is a key factor, given that it illustrates the symbolic nature of Delamere's dismissal.	Delamere's dismissal was a further support for the political nature consideration over whether dismissal should occur. Here, Shipley's decisive action was based on the political sensitivity associated with Delamere's breach.
	+	-			+	**political decision**

VI DISCUSSION / ANALYSIS OF EMPIRICAL EVIDENCE

This part attempts to draw trends from the above empirical evidence. This method of analysis has been undertaken due to difficulties in identifying cause and effect in the small sample size, where the setting for observations changes markedly over time. It is difficult, however, due to the small sample size to predict the impact that collective responsibility has as a threat to restrain breaches from occurring due to its deterrent force.

A Trends from 1932 to 1984

The seven instances of breach between 1932 and 1984 identified the following three trends. None of these trends can be said to be particularly strong, due to the long period of time over which these examples are drawn from.

A choice between dismissal and resignation was only required in limited circumstances, which were restricted to more serious breaches of collective responsibility. In Downie Stewart's case the requirement for a choice came about after he had been in conflict with the government's economic policy for some time, with repeated breaches of collective responsibility. In Quigley's case, what was essentially a direct challenge to the Prime Minister's authority increased the seriousness of the situation.

There appeared to be a significant degree of latitude for Ministers to note their own disagreement with Cabinet decisions in relation to their own departments, so long as they did not go so far as to vote against those Cabinet decisions. This may have reflected the greater degree of control that Ministers had over their areas of departmental responsibilities during this time period (as in the cases of Algie and Broadfoot).

Where there may be significant public debate or division over an issue then it may be more possible for breaches to occur. The key examples here are the breaches by Couch and Quigley, although the outcomes were markedly different. The key factor that allowed Couch to survive his breach was the Prime Minister's implicit sanctioning of his comments, whereas in Quigley's case the combination of a challenge to the Prime Minister's authority was enough to over-ride the fact that there was public division over 'Think Big'.

B Trends from 1984 to 1996

Due to the small number of observations it is useful also to consider the period of 1984 to 1996 in combination. This period has been selected due to the impact that policies over this period had on the calls for MMP to be adopted, and then the proximity of MMP's introduction. This split remains relevant notwithstanding that involved different governments with different management styles. The similarity that emerges may be particularly telling for the future of collective responsibility.

The key trend from this period is the emergence of more fundamental breaches of collective responsibility, where the choice of whether action was taken became far more

influenced by political realities than had previously been the case. In particular, the dismissals of Prebble and Peters can be seen as essentially being informed by pragmatism, where the breach had been of such a significant nature that dismissal had to occur quickly for political reasons. These situations were also characterised as being genuine dismissals, where there was no clear request that either Prebble or Peters rectify the breach.

The situations of both Prebble and Peters also reinforced a trend commented on in relation to the pre 1984 period. In both of those cases, the notion that prolonged and repeated nature of the breaches of the convention would increase the pressure for sanctions was reinforced by their dismissals.

Another interesting point to be reinforced during this time period was the fact that there is a lack of sanctions directly available for breaches by the Prime Minister. In the case of Lange's breach, his ability to retain the support of caucus after an unprecedented action was sufficient to authorise that breach.

The use of pre-emptive resignations to avoid future challenges to collective responsibility also emerged over this time period. In the case of both Douglas and Lange, their actions involved a choice to resign rather than face a situation where it was inevitable that there would be pressure on them to breach collective responsibility.

C Trends from after 1996

Evidence from after the introduction of MMP in 1996 supports the fact that coalition government may result in cyclical pressures on collective responsibility. The dismissal of Peters and Delamere reflected the cyclical pressures that may emerge during a coalition's lifetime. In Peters' case the pressure of a prolonged period of attempting to reach compromise positions ultimately told in the reaction of NZ First to difficult negotiations within Cabinet over the proposed Wellington Airport sale. It would be arguable, however, that the timing of Peters' dismissal was beneficial to him, in terms of enabling a sufficient period of time in opposition to rebuild support before the next election occurred.

The issue of timing was also important in relation to the dismissal of Delamere, whose testing of the limits of collective responsibility increased in the period leading up to the 1999 election. It is probable that future coalition Ministers will find that they, like Delamere, become more likely to face sanctions in the period coming up to an election, as the value of the coalition remaining in place decreases to all parties in the coalition.

This may particularly be the case for Ministers from parties who have had reductions in support during a parliamentary term, as their negotiating position reduces in power and they face more difficult decisions on whether they breach collective responsibility in an effort to brand themselves. At the same time, their value to the other members of the coalition may be reducing as the period remaining in the electoral cycle reduces, encouraging the other parties to consider their dismissal.

The experience of the Labour / Alliance coalition government illustrates, however, the value to coalition partners of instituting appropriate processes for resolving disagreements and working together in the spirit of consensual government. The markedly different coalition records of the three coalition governments that have existed in New Zealand since 1996 reinforce the success of the principle and process driven Labour / Alliance Coalition Agreement, and the flexibility of the 'agree to differ' mechanism it contains.

In part, this reflects the more natural partnership between Labour and Alliance, but it also reflects the fact that these parties focussed on broad understandings over strategic direction when entering into their coalition agreement, in contrast to the extremely specific coalition agreement between National and NZ First. This approach is likely to continue, and should remain more successful, so long as the parties are truly committed to the principle of consensus decision making and the maintenance of collective responsibility.

In this context, it is likely that future coalition agreements will continue to include 'agree to differ' mechanisms, however, the trend of not relying on these mechanisms established by the Labour / Alliance government is likely to continue. This is due to the benefits to both parties of not overusing this mechanism, and instead focussing on attempting to build consensus solutions, even if they involve compromise.

The final trend to note from the post MMP period is the recurrence of the use of pre-emptive resignations, in the case of NZ First Ministers following the break-up of the National / NZ First coalition government. In situations where a coalition breaks up it will be expected that this will be accompanied by pre-emptive resignations. The timing of this will be a feature worth watching for, as it is likely that individual Ministers will become more likely to want to distance themselves from a Cabinet that they feel is unstable. Similarly, it is will be interesting to watch to see if more genuine pre-emptive resignations occur, where Ministers have significant enough concerns with the compromises that occur within the consensus building process of coalition trade-offs.

VII CONCLUSION

The hypothesis that this paper set out to test was that breaches of collective responsibility were more likely to occur under coalition government, and that where breaches occurred they were less likely to result in sanctions. The evidence collected over when breaches had occurred identified a number of trends, however, it did not support the primary point of the hypothesis.

It could be postulated that this may be reflect the lack of a sufficient time frame since coalition government was introduced, given the limited frequency of breaches, for there to be evidence of any trend occurring. This conclusion would, however, ignore the significant effort that both the National/NZ First and Labour/Alliance coalition

governments have placed on emphasising the value of maintaining collective responsibility.

Both of these coalition governments have clearly endorsed collective responsibility as being a desirable feature of Cabinet government, and both also attempted to implement mechanisms to resolve situations of serious challenges to the maintenance of collective responsibility. The degree to which the respective governments have been successful differs markedly, although it is clearly not significantly. This is regrettably true of any attempts to draw firm conclusions from the evidence collected, and influenced the approach taken during the evolution of this paper of focussing on predictive trends rather than definitive statements.

The reduction in clear breaches of collective responsibility under the Labour/Alliance government suggesting that both their less detailed coalition agreement and the practical use of their coalition management processes may have been more successful than that of the National/NZ First coalition government. In particular, it appears likely that the focus of the Labour/Alliance "agree to differ" mechanism on collectively mandating breaches by a coalition party has been successful, and this is an approach that is likely to be repeated in future coalition arrangements. As a subtle evolution of collective responsibility it will be interesting to note over time whether this mechanism remains as effective as it has been over the first two years of the Labour/Alliance government.

Two other significant trends emerged from the analysis of evidence collected in this paper. The first of these is that there appears to have been an increase in pre-emptive actions over recent years where Ministers have chosen to resign rather than face situations where they consider that they will be unable to continue to agree with Cabinet decisions. This trend was supported by resignations around the time of the break-up of the National/NZ First government, which suggests that resignations for this reason may be more likely to occur during periods of significant conflict within Cabinet. There is an increased likelihood that such conflict will occur under coalition government, due to the inherent differences between coalition partners and their corresponding need to publicly differentiate their positions. This trend is likely to continue to be seen.

Finally, the strongest trend shown by the evidence collected was the role that political pragmatism plays in determining whether the requirement to resign over a breach will be enforced, or whether the Prime Minister will elect to dismiss for similar reasons. A consistent thread through all of the evidence collected was that minor breaches are unlikely to be significantly seriously politically damaging to warrant resignation or dismissal.

Once a matter becomes sufficiently politically charged, however, the Prime Minister's power to request resignation or to elect to dismiss will be quickly utilised. This supports three concluding comments. First, the litmus test suggested by Peters when he effectively challenged his Cabinet colleagues to oust him in 1991, of "what will cost the government the most votes", is perhaps the simplest predictor of what the consequences of a breach will be. Second, the rules about how collective responsibility operates are

and probably always will be driven by what Cabinet considers is appropriate at any particular time. And finally, collective responsibility ultimately is, as described by Joseph, close to a fiction based on the rules of pragmatic politics.

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