



House of Commons
CANADA

Standing Committee on Procedure and House Affairs

PROC • NUMBER 015 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, May 13, 2010

—
Chair

Mr. Joe Preston

Standing Committee on Procedure and House Affairs

Thursday, May 13, 2010

•(1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): We're going to call the meeting to order and welcome our first witnesses.

This is meeting 15 of the Standing Committee on Procedure and House Affairs. We're still in our study of prorogation.

We have two witnesses today, one in the first hour and one in the second. Brian Topp is here with us in the first hour.

Mr. Topp, we're going to ask you to give us an opening statement. I understand you have some wisdom to share with us, after which we'll then do rounds of questioning to take up the hour.

Mr. Proulx, you have a point of order.

Mr. Marcel Proulx (Hull—Aylmer, Lib.): On a point of order, Mr. Chair, we do the first hour with the first witness and then the second is for...?

The Chair: It's for a second witness.

Mr. Marcel Proulx: Okay. So we've decided not to combine them for the two hours.

The Chair: That was always our intent. Then the chair maybe messed up a little.

Mr. Marcel Proulx: That's okay. Super.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): He just wanted to get it on the record.

The Chair: You can point it out again and get the chair to grovel just a small amount more.

Voices: Oh, oh!

Mr. Marcel Proulx: That's okay. It just shows that you're not perfect.

The Chair: Oh, well, geez, I can get a note from my wife, if you'd like.

Mr. Marcel Proulx: Absolutely not.

The Chair: Mr. Topp, to get back to you—we do tend to get along fairly well at this committee, and we'll see if we can keep it that way today—thank you very much, and please go ahead.

Mr. Brian Topp (Former NDP National Campaign Director, As an Individual): Thank you so much, Mr. Chair.

I think it has to be said, to begin, that Parliament has been dismissed as sort of a done-in team in the past. It's been said that it

can't be done, and that the other team is too strong. In a way, we're in the seventh game of a series here.

So who should we look to for inspiration as we begin this discussion this morning? *Les Glorieux de Montréal*. Just as a new day has dawned in the National Hockey League with Canada's team, so I suggest that hopefully this discussion you're having will have a similar effect on Parliament and we can come back in Parliament as *Les Glorieux* have begun to do.

My name is Brian Topp. I'm grateful for you having me here today. I've read the available committee transcripts with great interest, and I've learned a lot from them. You've had a very interesting discussion to date, and I'm here to add a few thoughts.

During most of the 1990s, I worked in the Government of Saskatchewan. One of my duties, for five years or so, was to oversee our government's House business office, which is the support arm to the government House Leader.

This modest credential gives me a bit of small, well-disguised sympathy for the government members sitting in the minority on this committee. You don't always have an easy job, I suspect.

I've been active in federal politics with the New Democratic Party of Canada during the past three elections, but I should add that what follows are strictly my own views and in no way represent those of our party, our leader, or our caucus.

I would like to speak about two topics: first, the substance of the matter; and then the issue of implementation. So I would like to speak about this issue of prorogation and confidence that the committee has been wrestling with, and then I'd like to speak about the issue of what should be done to address these issues, which is the debate you've having about standing orders, or a Parliament act, or a constitutional amendment.

In my view, the power to declare or withdraw confidence is the fundamental power of the House of Commons. There are other critically important powers, such as the right to originate money bills, but the right to assign and withdraw confidence in the ministry is the crux of the matter, the central act of legitimacy and political power in our political system between elections. That being so, I submit that subordinate or unelected players must not interfere in its exercise. I refer here to the cabinet, the Senate, and the Governor General, as well as the courts. To do so is to attack responsible government in Canada at its root.

It is therefore my view, and I hope it will be your view, that the crown should and must never again seek to interfere in the sitting of the House of Commons when a confidence vote is properly before it.

I understand that a number of fairly complex proposals have been made by parliamentarians on this subject. I urge the committee to clarity and simplicity. I suggest you find a way to say that when a confidence vote is properly before the House, the House cannot be prorogued or otherwise interfered with in any circumstances, for any reason, by anyone, until that confidence vote has been dealt with.

This committee is asking itself some broader questions about the right of the crown to prorogue the House even in circumstances when there isn't a confidence vote before it. I offer the same advice: keep it simple so that penalties and consequences don't become acceptable costs of doing business.

If you feel the need to pass rules on the broader issue of prorogation without a confidence vote before the House, I suggest you establish that the Prime Minister shall not advise the prorogation of the House without a prior authorizing vote by all MPs, ever, in any circumstances, at any point in the parliamentary calendar.

Let me say a few words about confidence votes. It's generally understood that if the government is defeated on a money bill, it has lost confidence, but both Prime Minister Pearson and Prime Minister Martin arguably suffered defeats in the House that resemble this and remained in office due to what I think we could call "clever manoeuvring". It is also, unfortunately, long-standing practice in Canada's Parliament for the government of the day to point to whatever it wants and declare that matter to be a confidence vote.

That's a form of political blackmail that neatly reverses the purpose of such votes and turns them from an exercise in accountability into an instrument for the reinforcement of executive power.

If we are going to say that the House cannot be prorogued when a confidence vote is before it, then a definition of what a confidence vote is seems called for. I suggest the following.

● (1110)

I suggest that you consider establishing that a confidence vote should be defined as a motion—a privileged and important motion—proposed by a parliamentarian to immediately end the mandate of a sitting government and to trigger one of two outcomes: either a loyal address to the Governor General respectfully requesting that she authorize an election, or a loyal address to the Governor General respectfully requesting that she immediately replace the ministry with a specified alternative ministry. Governments, of course, are always free to resign or to threaten to do so for any issue they like.

For an example of how this could work, I refer you to article 67 of the German constitution. This mechanism, which is called the "constructive vote of non-confidence", worked smoothly in October 1982 to replace the Social Democratic government led by Helmut Schmidt with a Conservative one led by Helmut Kohl. I don't celebrate the political outcome, but I point to it as an example of how a Parliament can smoothly deal with confidence votes and the replacement of a ministry with another in a manner that is not controversial and doesn't raise issues of legitimacy.

Spain has a similar provision in articles 113(1) and 114(2) of its constitution. Hungary has a similar provision in article 39/A(1) of its constitution.

That gets us briefly to the issue of implementation. You've been debating this: standing orders, a bill, or a constitutional amendment? I of course defer to the many learned legal experts and professors who have appeared before you, but I can't resist offering my two cents' worth.

To begin with, I see the committee has spent some time pondering the issue of enforceability, which is central to the question of what form to use. I suggest you not worry about that overmuch.

If you legislate clearly and without complexity, with no escape hatches or weasel words, I think you are then entitled to expect that both the Prime Minister and the Governor General will govern themselves accordingly. In other words, I agree with Thomas Hall, in his presentation at the beginning of your discussions, that if the rules are clear, the Governor General at least can be expected to abide by them. If this proved not to be the case, fundamental issues about the office of the Governor General and the future of the crown in Canada might then arise, and I think you can expect the Governor General to be mindful of this.

This being so, my advice, for whatever it's worth, is to both immediately amend the Standing Orders and to introduce an appropriate Parliament act to enshrine these principles into law. I suggest immediately amending the Standing Orders, and I say this respectfully, because the present ministry probably cannot prevent you from doing so.

I suggest introducing appropriate legislation to make these rules less vulnerable to a future act of executive power by a majority government or some other majority combination. I doubt such a law would be adopted by the present Parliament, given the current majority in the Senate, but I suggest that it be introduced and that all parties of like mind commit to reintroducing it each and every session until it is adopted in its own good time. When, at some point, the circumstances before us today come to an end, I suspect the odds will improve and an appropriate amendment will be adopted into law.

Until then, the majority of the House can, should, and must speak clearly and authoritatively, something you can do through the Standing Orders. This is a moment I urge you not to miss.

Thank you.

The Chair: Thank you, Mr. Topp.

Madam Jennings, you're up first. These are seven-minute rounds. We'll ask you to share your time with the witness and we'll see if we can get in a couple of rounds in this hour.

Hon. Marlene Jennings: Thank you, Chair.

Thank you for your presentation, Mr. Topp.

I would like to have a little bit more information or description when you say it requires finding a simple way to state clearly that when there's a confidence vote that is properly before the House, the crown may not interfere in any way with the vote.

First, do you already have some idea of the wording of such a rule?

Secondly, if such a rule were created through the Standing Orders, that would require an actual definition of a confidence vote. So I would there again ask if you have specific wording, and if so, if you can make it available either today or in the near future to the committee through the chair and our clerk.

Finally, when you say not to worry about the enforceability of any such rule either through the standing order or legislation or both, is that because you believe that should a standing order be adopted and then subsequently legislation—or not, in terms of legislation—by virtue of having that, the Governor General would automatically respect the standing order? If that's the case, are you of the mind of some of our previous witnesses that given the fact that the Speaker, under our Constitution, has access to the Governor General, the Speaker could be charged by the House to inform the Governor General of the rule, of the definition of, say, a confidence vote, etc.?

Thank you.

• (1115)

Mr. Brian Topp: Thank you for those questions.

I learned through hard experience to leave it to the law clerks to do the drafting, so it seems to me that what's appropriate to do is to discuss the drafting instructions and what their intent is. I think it's appropriate to begin with great clarity—because clarity has served this Parliament in the past—and to say that the goal we are seeking is that when a confidence vote is before the House, the House shall not be prorogued.

We know that the House of Commons cannot issue orders to the crown. We also know that the history of Parliament, going back to a field in 1215, is of slow, succeeding acts that can be interpreted as acts of *lèse-majesté* in which we have respectfully asked the crown to be so kind as to not shut down the people's House when it is dealing with a confidence matter, which is its central role.

So I do think that clear words need to be found. I had a look at these constitutional articles that I'm referring to. These constitutional articles and the three constitutions I've referred to are very elegantly written, with very few words, clear words that cannot be misinterpreted, whose intent is clear. That's what I call on you to do. I believe the law clerk can achieve that.

So I do believe, as I have argued, that when or if, as I urge you, we could get to a world in which the House makes it clear that it is not to be prorogued when a confidence vote is in front of it, what is a confidence vote merits definition—perhaps not an exclusive definition, because it's hard to do that, but certainly with greater clarity than there is today.

I refer you to this model of voting to say, “There shall now be an election”, which is often what a confidence vote is understood as. For example, when the Clark government was defeated, everybody understood that an election therefore resulted. But I think this growing practice of constructive votes of no confidence is also very useful, because it eliminates all of the issues of legitimacy around Parliament's role in establishing who the ministry shall be, which is, of course, the guts of responsible government.

On this very interesting issue of enforceability, I think it is a mistake at this stage of the game to put enforceability measures into

these acts, because I submit that it risks trivializing what is the central issue of responsible government, which is can Parliament determine who the ministry is?

Just to be absolutely blunt about it, speaking to you from having seen the other side of the table—in a provincial legislature, to be clear, which is a very different game—faced with a choice between defeat and replacement and having to give up some opposition days, many governments would accept giving up the opposition days. So we run the risk of trivializing the act of responsible government and of accountability by establishing penalties. We run the risk of turning them into a cost of doing business. I think that's very unwise when we're talking about the central power of Parliament.

I submit that the central power of Parliament should be spoken about in appropriate terms and without complexity or trivialization, and I believe the Governor General would get the message if it were spoken clearly, as has been the case many, many other times in the past. For example, the principle that money bills shall originate in the House of Commons was one that was voted by a House of Commons.

This interesting revelation that the Governor General needs to listen to the Speaker, which would have been useful to know in the recent past, is an interesting mechanism that could perhaps be used to hard-wire in that the Governor General shall listen to the House of Commons before interfering in its core function that it performs in our Parliament.

• (1120)

Hon. Marlene Jennings: Thank you.

The Chair: You have just under a minute.

Hon. Marlene Jennings: I'm fine.

The Chair: Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Thank you very much, Mr. Chair.

Thank you, Mr. Topp, for being here. I read your book with great interest and wanted to take the opportunity to congratulate you on it. It is very well written. As a former historian, I appreciate your extreme precision in what you write there, a position obviously aided by the fact that you were clearly using a BlackBerry in your conversation. If anybody gets a chance to read it, they'll discover that it is full of references to “at 6:15, I got this e-mail, and I responded at 6:17”, and that kind of thing.

But it is very well done. I only wish that someone with your same eye for precision had been present at the Confederation debates and had kept notes as careful as the ones you kept.

I want to deal with something that I think is important here. I'm also glad, by the way, that of the two prorogations in the past years, you're talking about the constitutionally significant one.

It seems to me that what you are doing in your presentation this morning is dealing with this using constitutional language, but you're actually in spirit working at a more elevated level, asking about what is right in our constitutional evolution since Runnymede. If one looks at it that way, one isn't confronted with a struggle between Parliament and the crown as much as, I would say, one is looking at a central issue, that ultimately the people ought to give the mandate to govern, whatever the constitutional framework is that we put that in.

The obvious problem I'm faced with when I look at what took place as the coalition was being prepared is that the people, polls indicate, were not supportive of a coalition government.

So while I think you probably could achieve, using the mechanisms you've laid out, a situation in which it would be possible to execute the proposal you're advocating—and if that were done, I suspect that, in the future, people would be fully aware of what's going on and would vote accordingly—in 2008, only one of the party leaders, your own party leader, Mr. Layton, was forthright in saying during the course of the election, “I'm prepared to work in a coalition”.

Mr. Dion was not. In fact, he overtly rejected the notion, and I think that reflects why the polls were so strongly against this proposal. It simply hadn't been considered and was not one of the options that voters regarded as being on the table.

I wonder how you deal with that kind of problem of legitimacy as it existed in 2008. I grant that in a future election, if the mechanisms you proposed have been taken into account, people would very likely go into the polls fully aware that a coalition was a likely outcome and bearing that in their decision-making.

Mr. Brian Topp: Let me begin by congratulating you on your book-buying pattern. I do promise, as I told you before we began, to fill you in on how much of my advance I had to refund.

Thank you for the question.

It is true, of course, that people ought to give the mandate to govern. The issue is, who is that mandate given to? In a parliamentary system, the mandate is given to Parliament and it is for Parliament to form a ministry.

It's true that polls didn't support the coalition initiative in 2008, one of the reasons it collapsed. It is also true that the same polls don't find a majority in support of the current government. That being so, I think we need to find a way to conduct the nation's business in a more orderly and less contested fashion, in which these issues of constitutionality and legitimacy are not thrown around as political tools and the debate returns to where it should be, which is what is the best ministry that can command a majority of the House?

We have just learned again that the mechanism of coalition per se is not illegitimate. Your co-religionists in Britain have just formed a coalition with the Liberal Party, conceivably quite a solid coalition with relatively clear government principles. So the mechanism is clearly not illegitimate. The people of Britain did not vote for a coalition of Mr. Cameron and Mr. Clegg, but it is not a bad government that has been formed, or an illegitimate one.

If I can just finish this thought—

• (1125)

Mr. Scott Reid: Yes.

Mr. Brian Topp:—my main point is that it is the House that is elected by the people, it is the House that is legitimate, and it is for the House to form the ministry. I think what we definitely learned in 2008—in addition to numerous other political lessons, process lessons, and other lessons—is that some clarity on these rules would make that easier to deal with.

That's basically my point.

Mr. Scott Reid: No, I concur. As I said, I don't think that your leader did anything wrong. He was very forthright during the election: I'm looking at doing this in order to advance the social democratic ideals in which I believe. It gave him a legitimacy in my eyes that I thought Mr. Dion did not have.

I think if a Liberal leader were to go into a parallel kind of election saying, “Look, we want to win. We want a majority. We'll settle for a minority, if it's what we can get, and if we're low enough, we'll look at the possibility of a coalition”, then I'd think that's a legitimate basis on which to do it.

It does seem to me to be something that voters were right on at the moral level. I'm not arguing that the coalition would have been illegal; I'm just saying that there was something fundamentally wrong from the point of view of the participation the Liberals had in this, because they hadn't been clear. I'm really saying that I would encourage all participants to go into the next election being as forthright as your own leader was at that time.

I'm basically out of time, so I won't ask you any more questions.

Once again, I very much like the book, except for the cover art, which I think does not do justice to the seriousness and thoughtfulness of the text contained within.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Tell me you didn't design the cover yourself.

Voices: Oh, oh!

Mr. Brian Topp: I'm musing about the solidarity I owe my publisher. I shall remain diplomatically silent on the origin of the marketing materials.

The Chair: Thank you very much.

Go ahead, Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): Thank you, Mr. Chair.

Mr. Topp, it is always a pleasure to hear from witnesses who are optimistic, who have a good sense of humour. There is a twinkle in your eye, it is refreshing to see. We have heard from some very interesting people who are just as passionate as you. You bring a breath of fresh air and a dreamer's perspective to the committee.

Mr. Brian Topp: Your witnesses are like your teachers.

Mrs. Claude DeBellefeuille: You are right, they enrich our discussions. We try to find witnesses who complement the issue being studied, who have diverse points of view.

We are studying this issue because we found that the use of prorogation on two occasions in such a short period of time was not justified, that the reasons given did not convince the members of the opposition. Interpreters use the word “people” a lot; I am not sure whether that conveys Mr. Reid's idea when he said that the people did not want a coalition.

In any event, I know that the recent prorogations left a very bad taste in the mouths of Quebecers. The prorogations were seen as an abuse of power, a constitutional power that was misused, an instrument of partisan politics rather than a democratic tool to break a stalemate or renew a legislative agenda.

I listened to Benoît Pelletier, a professor at the University of Ottawa. He determined that we cannot limit the use of prorogation because the Constitution clearly says that it would not be feasible. Instead, he suggested that we make changes to strengthen the legislative branch, Parliament's authority, the authority of parliamentarians in the executive, in other words, the government. He noted that, over time, executive authority, the authority of the government, increased while the authority of Parliament decreased. It is obvious in a number of issues that are the subject of considerable debate by Parliament. Access to information is one example of a very contentious issue right now.

What is your reaction to that? To sum up Benoît Pelletier's position, it is necessary to strengthen Parliament's authority and do more to limit the authority of the executive. Do you see that as a possible solution, one that would give us more control over the misuse of prorogation, without requiring an amendment to the Constitution?

• (1130)

Mr. Brian Topp: I definitely agree with the principle of increasing Parliament's authority and limiting that of the executive. Mr. Savoie and many other students have written books and done studies that are very convincing on the phenomenon and the fact that this parliamentary system, within its British context, is the subject of a power struggle in every country where it exists. It has to do with issues that go well beyond the issue of prorogation.

In my view, it starts with adduction—where we are today. The power of Parliament, of the House of Commons, to choose who represents the government and who does not is its most important power. If the prorogation mechanism can be used to undermine the notion of confidence, all the other battles you are talking about—those involving information and the openness of the government, the tendency to minimize the importance of the law, Parliament's failure to make regulations that are increasingly important, the fact that the Cabinet is not a true cabinet—will be lost if the main battle is lost, the fundamental battle for a responsible government where elected representatives decide right from the start who represents the government. So it is important to win that battle. There will be a lot of work to do after that, but the most important thing is to win the main battle; it is the one that matters most. If that can be won, it is full steam ahead.

Furthermore, you suggested that it was fundamentally impossible to impose any enforceable rules without amending the Constitution, and that is true. However, our political tradition confers a lot of power to political conventions. I do not think these are pre-

revolutionary circumstances we are dealing with, but we did learn a lesson in December 2008: that the House of Commons needs to strengthen its authority.

So it would be good to do what we are discussing at the moment; it would set the right tone. We would win the series; there would be other battles, of course, but it would be a good start.

Mrs. Claude DeBellefeuille: I have a minute left? Very well. A minute is not much time. Do you have a question, Ms. Gagnon?

Ms. Christiane Gagnon (Québec, BQ): I just got here.

Mrs. Claude DeBellefeuille: Mr. Topp, I am moved by your optimism, but I do not get the sense that we are going to make much progress right now or in the near future, since it seems that voters will be sticking to the same path for some time to come: electing small minority governments.

In Quebec, the 10 or 12 most recent polls show a strong tendency to elect a majority of Bloc Québécois members, and that means—unless the Conservative government's bill does not pass, reducing Quebec's weight—that we should expect to see minority governments.

Do you not find that having successive minority governments disrupts long-standing rules? It forces us to think, to get used to alliances or coalitions, to be open to new ways of governing. We need to face the new dynamic that has been decided by the people, by voters.

• (1135)

Mr. Brian Topp: I agree with your analysis and your findings.

[English]

The Chair: A short answer, please.

[Translation]

Mr. Brian Topp: I agree with your analysis and your findings. So let's get back to the issue. Given that we will probably have a minority government for some time to come—you are absolutely right, but this is politics, so who knows—the most important thing to do is to define the rules to establish who represents the government, precisely because we have minority governments.

[English]

The Chair: Mr. Christopherson, you're up.

Mr. David Christopherson (Hamilton Centre, NDP): Thank you very much, Mr. Chair.

Brian, it's good to see you. Thank you for coming today.

Just for the record, for the history books of Canada, we do want to acknowledge that notwithstanding the sophistication and cosmopolitanism that Mr. Topp brings, he doesn't normally like to wear a tie. Out of respect for Parliament and Canadians, he wore a tie, and I want Hansard to reflect the fact that he felt that strongly about this. We can't get him to do it at any other meeting I've been to, I'll tell you.

Reference has been made to your book, and that's one of the reasons we brought you here: you have first-hand experience with a number of these issues. It's particularly interesting to hear the government members beginning to plant the seeds and suggesting that unless a hypothetical coalition is declared early on, there's no legitimacy in it.

They managed to kill the issue and they won. I give them their due. They did it by publicly demonizing the whole notion of coalitions. I think we're slowly getting past that, but I want to ask your thoughts on this idea that it has to be declared ahead of time. I'll ask you to link it to the fact that on at least two occasions—and I stand to be corrected if I'm wrong—the current government, in a minority situation, passed their budgets and stayed in power with the support of the Bloc, because budgets are votes of confidence. Of course, it was the ingredient of the Bloc's support for the proposed coalition of the NDP and the Liberals that the government used to focus their major demonization, if you will.

It's interesting to see them trying to put this forward as, "If you're not declaring ahead of time, it's not going to have any legitimacy". I'd like some of your thoughts on that. We don't have a lot of time. I'll link it with another question.

I was interested in your reference to Germany, Spain, and Hungary in terms of some of the language they had that you thought was very effective. I see you have a paper beside you with some of that. I'll give you an opportunity to read some of that to us, because I'd like to hear the clarity that you're quite supportive of.

Mr. Brian Topp: Holy smokes. Well, in the time you likely have, let me just offer you a few comments.

I think democracy is a vulnerable thing and the privileges of Parliament are vulnerable things. One of the good things that could come out of the politics of this Parliament would be a commitment by all parties to leave what is constitutional as constitutional and leave what is political as political.

It could be argued, as the honourable member Mr. Scott Reid has done, that it is politically inappropriate or merits a political sanction at the polls to run an election saying you will never ever govern with another party, and then, a few months later, turn around and seek to do a coalition. I think it could be argued that politically there should be a price to pay for that at the ballot box in a subsequent election, but it is not correct to say that it is constitutionally illegitimate, therefore, for the House of Commons to do its fundamental work of picking the ministry.

That is the debate that we mixed up in the last two years. The people of Canada heard a very confusing debate about what parliamentarians are permitted and not permitted to do, not as political issues but as constitutional ones. I think the merit of the discussion you're having now in learning from recent experience and acknowledging that plenty of mistakes were made by everybody here is that we should be clear that it is fit and proper for the House of Commons to form whatever ministry it wants, whatever the players have said in a prior election, because the circumstances in which they operate are defined by that election and are inherently unpredictable. What you say during an election campaign cannot predict what the result will be after the election campaign, and

therefore you'll conduct yourself differently, perhaps. The players in the British Parliament have just proved that.

With regard to this question of clarity of language, just to illustrate it in one sentence, we can turn, for example, to article 67(1), bearing in mind that I think this is an Internet translation. I'm not saying that it is precise in every word.

It says:

The Bundestag shall express its lack of confidence in the Federal Chancellor only by electing a successor with of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected.

That is very clear, and it has worked out in constitutional practice. If you want to remove the sitting government under this clause, then you have to say, "It is not Prime Minister Reid who shall be heading the ministry; it will be Prime Minister Christopherson". That's nice and clear, and it produces a change in the ministry without constitutional issues.

There will always be political ones. When this happened in 1982, our tribe in Germany was not happy and argued about it for many years, but that's politics; constitutionally, the House was allowed to do it.

• (1140)

Mr. David Christopherson: Do they deal with prorogation? One of the difficulties we've heard from a lot of the academics, professors, and experts is that there's not a lot of reference to prorogation. It's there, but there hasn't been a great analysis. Are you aware of any of the examples that touch on the issue of prorogation in their language?

Mr. Brian Topp: I didn't do a constitutional study in Germany, Spain, or Hungary of their prorogation language, although I think it would be an interesting exercise to get the parliamentary library to do.

I do have a comment on prorogation, if you like.

Mr. David Christopherson: Yes, very much so.

Mr. Brian Topp: Our government has routinely used prorogation in the functioning of our legislature, as you will find in all legislatures. We routinely brought our parliamentary program to the end, roughly every mid- to late June, essentially every year, so we could do a throne speech and a new budget the following year. The Saskatchewan legislature ran on a fairly predictable routine. It was well understood by all the members, including that government bills that did not pass by the end of June typically died on the order paper.

It might interest you to know that this routine on prorogation significantly empowered the opposition. What they would do and the result... I don't know if this still happens; I haven't looked at proceedings in the Saskatchewan legislature for some time. But certainly when I was there, the opposition would hold up all the bills until the last two or three days, knowing full well that they were all about to die on the order paper. And then there would be this fascinating political discussion in the last days of the session on what was going to go and what would not go. So in that way, prorogation actually worked for the opposition.

Mr. David Christopherson: That's actually what happened in Ontario too; the same kind of negotiations.

Mr. Brian Topp: Very good.

I do agree with some of your witnesses that you need to be a little bit careful about this issue and know that prorogation is a broader tool. In my comments today, I call on you to focus on the issue of when prorogation is used to prevent the House from performing its fundamental constitutional responsibility. That seems to me to be the issue before us.

Whether you need to ring-fence prorogation otherwise—the broader debate—personally I'm a lot less exercised about it than about this central point.

Mr. David Christopherson: Thanks a lot, Brian.

The Chair: Thank you.

That completes our first round. We're going to move to a five-minute round. We'll need to be fairly succinct and share time, if possible, because there are some who will not get a chance to speak if we don't.

Quickly, Mr. Savage.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): Thank you, Chair.

Mr. Topp, I'm not normally a member of this committee, so I've come in today with...but this is an issue of interest to all parliamentarians, I think, and increasingly to Canadians.

I want to touch on what you were just going to, which is the use of prorogation in terms of exceptional use and normal use. Canadians have a sense now that the government prorogued in each of the last two years, 2009 and 2008, but in fact it has prorogued three years in a row. In 2007, the House was due to come back in mid-September and the House was prorogued to October. There were some new ministers being sworn in and so on. That wasn't raised much as a national issue, because it was seen as a "normal"—if you could use that term—use of prorogation.

I want to ask you to what extent you think, in dealing with prorogation, you have to look at whether there are times that prorogation is necessary, sensible. Some prorogations may last a week, a day, depending on the circumstance; it may be because the Prime Minister is going to a meeting that it's been prorogued, as opposed to what happened in 2009 and 2008.

You were straying a bit in that direction, talking about Saskatchewan, and I wonder if there's anything else you would add about the difference between whether you call it normal or unexceptional prorogation versus other prorogations.

• (1145)

Mr. Brian Topp: Well, my first comment is that as a member of Parliament, I'm sure you appreciate better than I do that what is before Parliament is extremely complex, and the way it is going to unfold over time is hard to predict. It is very hard to write rules now that are going to be appropriate in every circumstance for the next 50 to 100 years. I think this committee confronts that when it is musing about how to ring-fence the prorogation powers. I was just discussing with your colleague that there are occasions when it is entirely appropriate for government to use the prorogation power, and when doing so helps the opposition.

I'm not sitting here today urging you to abolish the prorogation right. As you know, it's a complex constitutional artifact that has resided in the reserve powers of the crown. I think it is best to deal with what the House does not want, and what you clearly, I submit, should not want based on your experience.

One thing for sure I think we can say is that, let's face it, it's relatively rare for opposition parties to put formal motions of confidence before the House. If we look over recent parliamentary history, it's the government that tends to trigger confidence votes more than the opposition, for obvious political reasons.

But when a formal confidence vote is before the House—and I suggest you define what such a motion would be—then I think you want to say that the House cannot be prorogued under any circumstances. You're doing that in vocal exercise of your legitimacy as the elected representatives of the people. It is, of course, a form of a request to Her Majesty the Queen through the Governor General. It has perhaps no constitutional validity, but for the reasons I outlined, I submit it would probably be a powerful convention.

As to broader issues and whether you should ring-fence it, I didn't get into those today. I know you've been discussing them and you have some proposals before you. I suggest you be careful, especially with complex rules, because it's hard to predict what will happen in the future.

Mr. Michael Savage: Thank you.

The Chair: Thank you, Mr. Savage, and thank you for joining us today.

Mr. Reid is next, very quickly. He and Mr. Lukiwski are sharing.

Mr. Scott Reid: The obvious problem with some of the proposals that have been given, especially those that involve disincentives, is they don't really have any relation to the kind of situation that was faced in 2008.

I want to return very briefly to some things Mr. Christopherson raised. He made a comment on what I was speaking about. One of the problems that struck me in 2008 was that the throne speech was approved. There was a vote on division, but nonetheless it wasn't struck down.

I've always been mystified as to why the opposition didn't simply vote against that. That being done, you wouldn't had to have had any kind of... The tests that it was necessary to come up with, which you detail in your book, wouldn't have been necessary. The Prime Minister would never have commanded a majority in Parliament.

So that's been a mystery. Perhaps you could shed some light on that.

Mr. Brian Topp: Of course, the defeat of a throne speech is a confidence matter, and would have got us to the world we're in here, which is a debate about who a new ministry should be.

If you're inquiring into the political circumstances at the time, as opposed to the constitutional issues, I guess my answer is that the government had not made a terrible blunder yet that had united the opposition and created the political circumstances permitting such an act, which is my point that you have to make a difference between the constitutional rules and political realities.

Then the issue is about whether a constitutional or a legitimacy issue arises. I remember this being raised at the time. The throne speech had passed. I don't quite remember the details of where it was, but let's take it as read that it "passed". Did that mean the government had survived a formal confidence vote and the matter could never again be raised, whether the House had confidence or not?

My answer is that you will not take that view when, perhaps years from now, you are back on the opposition benches. I think you will take the view that the House of Commons is always free to turn to the issue of confidence in a ministry, in principle, and can do so in many circumstances, the most obvious one being on defeat of a money bill, and also on defeat of a throne speech. I submit you could also hardwire into at least the Standing Orders some other specific ways, which everyone would know: this is a confidence vote that's properly before the House.

So that's my answer to your question. In terms of constitutional practice, it would be entirely appropriate, having given confidence in a government on Monday, to then vote it out on Tuesday. That's the genius of our system.

• (1150)

Mr. Scott Reid: Right—but vote it out and have an election as a result. The relevant question here, I think, is that there is some point at which it is legitimate for the Prime Minister to go to the Governor General and advise, "I want a new election; call an election." There is a point at which, for example, in the absence of having commanded Parliament's support ever, the throne speech having been voted down, the Prime Minister cannot tender such advice and expect it to be listened to. It would be disregarded, and the Governor General will turn to the leader of the opposition.

Clearly you wouldn't draw the line and say that once you got the throne speech through, the Prime Minister could then give this advice. There is some point—I think you would say—at which the Prime Minister can give that advice, having lost the confidence of the House.

This is the question I'm really asking you here: under the current situation—not under the situation you're proposing, which would change the rules of the game—what would that point be, in your mind?

Mr. Brian Topp: Of course, you're taking us to the King-Byng debate and the issue of whether a Governor General can call on the second party in the House when the party with the most seats reports that it does not enjoy the confidence of the House.

My view is that Governor General Byng was absolutely right and that Prime Minister King was absolutely wrong. It was constitutionally perfectly proper for the Governor General to call on the leader of the Conservative Party to seek to form a government.

That was a political misjudgment, because in fact Mr. Meighen could not command a majority, as became evident within some 48 hours. But constitutionally that was the right call.

Now—as I understand what you're asking—does the Governor General's right to do extinguish over time during the life of a Parliament? I would argue that as a constitutional matter...bearing in mind that we're talking about political conventions here, but to the

extent they are unwrittenly constitutional in the British tradition. The Governor General always has the power to call on another parliamentarian to try to form a government. The issue is whether that will work politically when the next election comes along. The closer the next election is, the riskier it is for all concerned. But that's politics, not constitution.

Mr. Scott Reid: The real question is that at some point—

The Chair: Mr. Reid—

Mr. Scott Reid:—she could ignore the advice or reject the advice of the Prime Minister.

The Chair: Thank you for recognizing I'm here, but you are past the five minutes.

Some lessons on sharing with Mr. Lukiwski will have to happen in the future.

Mr. Tom Lukiwski: He doesn't share his toys either.

Voices: Oh, oh!

The Chair: Madame Gagnon, do you have a question?

[*Translation*]

Ms. Christiane Gagnon: I want to know what approach the Governor General could take within the current context of Canadian parliamentary government. Could she refuse the Prime Minister's request to prorogue the House? It would be pretty shocking for her to refuse the Prime Minister's prorogation request for whatever reason. Perhaps we should limit the procedure that a Prime Minister, or the current Prime Minister, must follow in certain situations, when it is very clear, as it was the last time. Everyone knows, the government did not want to deal with the issue of Afghan detainees or the matter of the environment. It thought that the public would have a short memory. We did not have an easy time of it. When we went back to our ridings, people said that we were on holiday. The public lost its confidence in politicians. People understood the game the government was playing.

Is there a way, by rule or otherwise, that the Governor General could refuse to prorogue the House in certain situations?

Mr. Brian Topp: That is a very interesting question. In fact, most of the instructions that pertain to limiting the Governor General's power were written by the executive. So it would seem that, when the Prime Minister requests that Parliament be prorogued, the Governor General has to grant his request, regardless of the circumstance, even in the event of a confidence vote in the House. Consequently, it seemed that the Governor General did what she was supposed to. We learned that the Governor General, as instructed by the Crown and the Prime Minister, understood that her role was to always grant the Prime Minister's prorogation request, regardless of the circumstances.

In my view, the House has to give the Governor General a new instruction through the Speaker of the House of Commons. It can be done. In other words, on top of the instructions to limit the power in question and the suggestions she was given, another is added—in the case of a confidence motion before the House, the Governor General must not grant a prorogation request from the Prime Minister, when he is clearly trying to use the measure to prevent the House from voting on that confidence motion. It would start there, and then other questions would need to be answered, broader ones, as to what the instructions to the Governor General would be. That would be a very good place to start.

• (1155)

Ms. Christiane Gagnon: Thank you.

[*English*]

The Chair: Thank you very much.

I'd really enjoy it, Mr. Christopherson, if you could be succinct and brief and share some of your time.

Mr. David Christopherson: You mean be uncharacteristic.

Something just popped into my head when you mentioned the possibility of a confidence motion. I'm just playing devil's advocate. Could the opposition play a role by starting to play games too, by throwing in a motion of non-confidence that really is not going to carry, the sole purpose of which is to trip up a prime minister who otherwise would be within his rights to prorogue? As most of us have acknowledged, it's an important tool that Westminster parliamentary democracy needs. That's one question.

Secondly, it's interesting; you suggested that we avoid going to penalties. There's been a lot of discussion around that. If I understood your thinking, it was that since it's a life-or-death decision, and a government's always going to choose life, then why trivialize this by saying therefore in life and death if you cross that threshold you're going to have these little things happen to you, relatively speaking?

My question to you would be, though, faced with life and death, no matter what, every government will always choose life. Therefore, if there are no penalties, then they've walked across that threshold, because they made the same determination they would make whether there were penalties or not, and yet without the penalties they've gotten away with it. Could I just have your thoughts on that?

Mr. Brian Topp: Perhaps, if you don't mind, I'll speak to this question of penalties. I don't think we have much time.

Probably one of the things I feel most strongly about is that you would be making a very big mistake to establish penalties in these rules. Just to restate my argument, I think the risk you run is that a penalty will become the cost of doing business in this game, and that the result will be that instead of reinforcing the fundamentals of responsible government and the central power of Parliament, you will have trivialized it.

Your question is that if we don't have penalties, won't it be the case that a future executive will simply go ahead—

Mr. David Christopherson: And do it anyway.

Mr. Brian Topp: My answer is that I think in this matter we should have faith in our fundamental system of government and in the role of the crown and the Governor General. I think if Parliament speaks clearly and without ambiguity, without weasel words, without conditions and without such penalties that raise questions of doubt and complexity into it, and says that when a vote of confidence is before the House, you shall not prorogue in any circumstances, period—in clear language similar to what you find in this constitutional language that I referred to—then I would be quite surprised if the Governor General permitted that to happen. That being so, it would have the power of convention, and I think the role that you should end up in is that no prime minister would do it because they would know with considerable certainty that it would not work. And if it did work, then what we would have learned is that the step we had taken wasn't sufficiently powerful, and there would be plenty of precedent in parliamentary history for a House in such circumstances to then take stronger and stronger measures.

But begin with the principles, and begin by speaking clearly, and then see if practice tells you that you haven't been strong enough.

Mr. David Christopherson: Thank you very much.

Thanks, Mr. Chair.

The Chair: Thank you very much.

Mr. Lukiwski, you can have a quick question.

Mr. Tom Lukiwski: Thanks very much, Mr. Chair. I appreciate your giving me a question.

Brian, I just want to talk to you very briefly about the definition of confidence, which you've mentioned several times, particularly as the government deems confidence. You've mentioned that governments more than opposition over time have used confidence votes for their own purposes.

Our government has basically gone by the...I wouldn't even say it's a definition, but more of a rule of thumb, that for something to be deemed confidence, it has to be of national importance. I'll give you a clear example and one I know, being a former Saskatchewanian, you would be very familiar with, and that's the Canadian Wheat Board.

I personally get a lot of my strong supporters who are anti-Wheat Board phoning up and giving me hell all the time and saying, "Look, I know you're in a minority government so you can't get changes made and all this sort of thing. Why don't you just make it an issue of confidence and force these guys on the other side?" I just answer them back by saying, "It's because it's not of national importance."

I mean, as important as it is to western Canadian grain farmers, it doesn't have importance throughout the country. It's not important in Ontario, Quebec, or Atlantic Canada. So we cannot, and we will not, make it an issue of confidence.

But my question to you is this. If governments guide themselves by that rule of thumb, is that sufficient, or do you think there needs to be more clarity on what actually deems confidence measures, brought in either by the opposition or by the government?

•(1200)

Mr. Brian Topp: Well, slavery having been abolished in Canada, no one, not even parliamentarians, can be compelled to be in government if they do not wish to be. If the government says, “This measure must pass”, whatever it is, and it does not, then it is in the power of the government to resign.

So I'm not sure that turning from a political convention, perhaps, which will morph over time, to a constitutional rule or a piece of legislation, or a House standing order defining a confidence vote as being a bill of national importance as deemed by the government, is particularly useful. It's a political issue, over time, and it is a fine calculation, as you know well.

If we create a crisis over issue X, and the opposition dares to take us down, do we think we'd do well in the politics...? That is a calculation that should remain in the realm of politics. That's why I said in my little opening comments that at the end of the day, the government can choose to resign any time it wants to. I'm not sure how much you can “pre-can” that and write rules about it that are going to be all that helpful in the future. I suggest that you go to the other end of the issue, which I would submit is in our tradition, and address a specific issue where you know there is an issue—namely, do you have responsible government or not, and can the House of Commons determine who is the executive or not? Write a rule about that, and then let convention and practice determine other issues.

Mr. Tom Lukiwski: Thanks, Chair.

The Chair: Thank you.

Mr. Topp, I apologize for forcing you to put a tie on today, but I thank you for your open and honest answers. You've been a great help to this committee.

Mr. Reid, do you have a point?

Mr. Scott Reid: On a point of order, I wonder if we could ask Mr. Topp to submit his sections of those constitutions. I'm aware that they're just Internet translations. Nevertheless, if he could submit them, we perhaps could get our analyst to dig up the formal translations.

The Chair: Yes, we'd love to have them. It would save us a bit of work, if you could give them to us.

You'll do that? Thank you.

Thank you very much.

Mr. Brian Topp: Thank you, sir.

The Chair: We will suspend just for a moment while we bring in our other witness.

Thank you.

• _____ (Pause) _____

•

•(1205)

The Chair: I will call the meeting back to order so that we can get in as much questioning as we can.

I recognize that some of you are still gathering your lunch.

Mr. Sproule, I'm going to apologize ahead of time for the rest of the committee. We will be eating in front of you. This meeting takes place from 11 a.m. to 1 p.m., and often this is the only way we can get some midday lunch.

Mr. Donald Sproule (National Chair, Nortel Retirees and former employees Protection Canada): I appreciate how hard-working the MPs are.

The Chair: Well, thank you. Can I get a note?

As per normal, as you and I have discussed, please make an opening statement, and then we'll get to questions. We'll try to get in as many as we can.

We would like to stop at about five minutes to the hour, because I have a little bit of committee business, just a quick discussion, before we're done today.

Thank you very much. Please start with your opening statement.

Mr. Donald Sproule: Thank you, Mr. Chairman. *Merci, monsieur le président.*

I'm Don Sproule, and I'm the national chair of the Nortel Retirees and former employees Protection Canada. I represent some 17,500 pensioners and 1,500 former employees, and we're located all across Canada: London, Calgary, Toronto, Belleville, Kingston, Montreal, Halifax, and points in between. With the layoffs that are now under way at Nortel, we expect the pensioner numbers to increase to around 20,000 Canadians.

Nortel filed for creditor protection in January 2009, and by June 2009 it was patently clear that Nortel was not going to restructure. In fact, they were going to proceed to wind up.

In January of last year, I woke up to the fact that my pension was not secure. I just did not believe it. I read several statutes and thought I'd found umbrage in the WEPPA legislation, only to find out that unpaid contributions are not protected under bankruptcy laws. In our case, there is an underfunding of the pension plan of about \$1.1 billion. That means that when the cutbacks happen to the Nortel pensioners, we'll be cut back to something like 69% of our pension plan.

On September 30 of this year, the pension plan will be handed over to the provincial government, to FSCO, and probably cut back to the 69% level. In December of this year, our health plans will be cut back—terminated, in fact—so the combined cutback to Nortel pensioners will be in the order of a 40% haircut in terms of our payments from Nortel.

So how did we arrive at this situation? As I said, many people were surprised that we were not protected under bankruptcy, and many of our friends and families were equally surprised. We had no inkling that pension deficits were unsecured claims on the estate.

On deeper analysis, we found out that, as unsecured creditors, we're going to be pitted against the junk bond holders and foreign government agencies. We consider this to be a grossly unfair playing field, and if you look at the situation, the bondholders worry about a company going bankrupt. They actually say, "Is Nortel going to go bankrupt? If it is, I'll shorten the duration of the bonds I'll sell them; I'll raise the interest rates. In fact, I'll protect myself by actually cross-licensing my bonds between Canada and the United States in terms of the Nortel estate."

They are skilled money managers, and they can buy a form of insurance called a "credit default swap". If anybody's been reading the press lately, they'll know about the credit default swap and what it's doing to countries like Greece.

Credit default swap is a form of insurance, but it's not just like any insurance. You can actually go and buy.... It's like buying insurance on your neighbour's house and worrying—or maybe hoping—that your neighbour's house is going to buy down. That's the nature of the marketplace.

I, as a Nortel pensioner, will never be able to prove that there is a linkage between the credit default swap market and Nortel's demise. It's a very opaque marketplace. But I do believe there is something happening in terms of what's caused Nortel's demise, and I do believe that the junk bond holders are going to make out like bandits in terms of Nortel's demise, and they'll do it on the back of Nortel's former employees, both pensioners and people who were terminated without severance.

If you think about the pensioners on the other hand, the bondholders look at risk and they manage risk. The pensioners took a pension to avoid risk. My concern was, "Am I going to live too long?", because—

• (1210)

The Chair: Mr. Sproule, just hang on a second.

Mr. Proulx.

Mr. Marcel Proulx: On a point of order, Mr. Chair, I appreciate that this is a very fragile, delicate territory, but I have been listening to Mr. Sproule since he started four minutes ago, or seven minutes ago, and up to now, anyway, it sounds as though he's addressing the wrong committee.

The Chair: Yes, I was about to get there too.

Mr. Sproule, love your presentation, but this is a study on prorogation.

Mr. Donald Sproule: Understood.

The Chair: I recognize that you have been before finance committee, and certainly at pension round tables and other things. Let's get to the prorogation piece, please, if you wouldn't mind.

Mr. Donald Sproule: Okay. I certainly will.

Basically, on prorogation and where we stand on prorogation, we thought we were making progress in terms of the Parliament of Canada. We brought forward our ask in terms of amending bankruptcy laws to help protect pensioners. We thought we were making progress with NDP bills tabled in the House of Commons, and also Liberal bills tabled in the Senate. Momentum was being

gained, and all of a sudden we found out, in this slow-motion train wreck, that the House was prorogued, and prorogued for a period of six weeks, I believe it was. The way we felt as Nortel pensioners was that it wasn't so much the government's right to prorogue; it was the duration.

So we're on a track—hopefully—to have amending legislation for the Nortel pensioners. We see the switchman at the end of the track, and they have the ability to pull the switch and save us. And then somebody decides, "Oh, it's time to go on coffee break. We want to recalibrate what's happening with the switch."

That's what the galling piece was in terms of—

The Chair: Mr. Lukiwski, you have a point of order?

Mr. Tom Lukiwski: No, it's not a point of order.

The Chair: You want to be put on the list? Okay.

I'm very sorry. I misinterpreted the way he raised his finger. It won't happen again.

Mr. Donald Sproule: Okay.

So that's just cutting to the chase, right? The hiatus did us no favours. Time is not our friend in terms of the bankruptcy proceedings. They're continuing at their own pace. We spent something close to 100,000 hours of volunteer work in NRPC, working to see if we could better the outcome, and it was galling for us to have the government go into hiatus for that period of time.

That's the end of my remarks.

The Chair: Super. Thank you very much.

From the official opposition, Mr. Savage.

Mr. Michael Savage: I'm more interested in the issue that was on before, because that relates more to my own committee. Having met with a number of the Nortel workers, and particularly people who are suffering from conditions like MS who are going to see their monthly living allowance, what they live on, reduced in some cases from \$3,000 to \$300 or \$400 a month, I have a significant concern about that.

In terms of the prorogation, I'm not sure I really have any questions for you. It seems to me that prorogation slowed down a lot of what Parliament is meant to do. Whether people like the way the House of Commons acts or not, they see their members of Parliament as their voice. I think perhaps what you're getting at is that at a critical time for you and for the people working at Nortel and other people who were facing serious problems because of the lack of protection—change that could be made to the BIA and other things like that—that was shut down; and that's not the role that people see their parliamentarians having.

I don't specifically have a question, but I wish you well, and that goes for the folks you work with.

Mr. Donald Sproule: Thank you.

Mr. Michael Savage: I thank Marcel for the opportunity.

The Chair: Mr. Proulx.

Mr. Marcel Proulx: Thank you, Mr. Chair.

Mr. Sproule, I hope you understand my intervention a few minutes ago. I just wanted to make sure that you were in the right committee.

Mr. Donald Sproule: That's fine.

Mr. Marcel Proulx: The study on prorogation means that rather than looking in the rear-view mirror, we're looking through the windshield.

I'm sure you've listened to some of our committee meetings. You've probably read some of the briefs that have been tabled by some of the previous witnesses.

Do you have any suggestions, or do you have any ideas, of how this can be changed or how this can be improved? Do you have any suggestions for us in terms of the idea of prorogation?

I appreciate that you hurt, and that you hurt more because of the prorogation, but looking forward, do you have any ideas or any suggestions for us?

•(1215)

Mr. Donald Sproule: In our case, I think the one recommendation is the period in which the House is prorogued. I do believe, if I am correct, in the Ontario legislature they prorogued and then a couple of days later continued on. So it's a question of the business of Parliament coming to a halt during prorogation and for how long.

That's the main issue, and that would be my recommendation, to shorten the timeframe.

Mr. Marcel Proulx: Thank you.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

Thank you, Mr. Sproule, for being here.

I want to say at the outset that I sympathize with all Nortel employees. My daughter-in-law used to work for Nortel until she was downsized a few years ago. She wasn't there long term, however, so she certainly didn't have the challenges that you and your colleagues are facing. I do very much sympathize with you, and I hope there can be some resolve sometime down the line.

I do want to go back to one thing you mentioned in your opening remarks. You said you had been working with the NDP and the Liberals on some of their bills. I assume you mean private members' bills that they were bringing forward?

Mr. Donald Sproule: Correct.

Mr. Tom Lukiwski: I also assume that you understand that prorogation does not affect private members' bills.

Mr. Donald Sproule: I do.

Mr. Tom Lukiwski: They do not drop from the order paper; only government legislation does. So I'm looking for a further explanation of how prorogation could have adversely affected you in the sense that the bills that the NDP and the Liberals are putting forward are still there, and they still can move forward at the same pace that they were previously.

Mr. Donald Sproule: Correct. But I do believe that we were hoping to get some of this to committees as well, and the committees did cease, is that not correct, during prorogation?

Mr. Tom Lukiwski: Yes, that's correct.

Mr. Donald Sproule: Right. And that was one of our objectives, to make sure that the debate had the visibility in terms of the broader population and the MPs.

Mr. Tom Lukiwski: More than the prorogation, then, it was the length of time.

Mr. Donald Sproule: Correct.

Mr. Tom Lukiwski: It was the fact that we missed 22 days of sitting time. We gained back 10, because we added two more weeks, so the government was actually down for 12 days.

But that is your concern, that even 12 days affects the ability for committees, perhaps, to get one of the private members' bills—

Mr. Donald Sproule: Correct.

Mr. Tom Lukiwski: —had it come to the point where it was actually past second reading and had gone to committee.

Mr. Donald Sproule: Yes.

Mr. Tom Lukiwski: Okay.

Let me then ask about your views on....

Well, I shouldn't; that's more of a finance question than a prorogation question.

I thank you for your time.

The Chair: Thank you.

Madame Gagnon.

[*Translation*]

Ms. Christiane Gagnon: I do not really have a question so much as an observation. There are consequences to proroguing the House, of course. In a situation such as yours, you must have felt powerless.

I do not think that the public initially understood what prorogation entailed. But there were many people who wanted to educate the public on the consequences of prorogation. There was a snowball effect. A Web site was set up by a young man, who appeared before us. A university professor appealed to his peers. Then there was a sense that people had a better understanding of the impact of proroguing the House and the reasons why it was used. We now see that the public feels it was inappropriate to prorogue the House in that way.

In response to an earlier question, you recommended shortening the period of time in question, but do you have other recommendations, for example, that certain committees continue to sit? Do you see that as a possible solution? I know that in some provinces, committees continue to meet during prorogation. When committees do not meet and certain pieces of legislation are not dealt with, it jeopardizes the public.

[*English*]

Mr. Donald Sproule: Yes, that very definitely would have been of benefit to us, if the committee could have continued during prorogation. I agree.

•(1220)

[*Translation*]

Ms. Christiane Gagnon: Thank you.

[English]

The Chair: Mr. Christopherson.

Mr. David Christopherson: Thanks very much, Chair.

Thank you, Mr. Sproule, for your attendance today.

I can't imagine anything that would be more terrifying to someone, especially as they get to their late forties and into their fifties, to find out that the pension they were counting on is gone, jeopardized, slashed. The thing about pensions is that it's one of the areas where once you reach a certain age, you can't go back and fix it. You can't go back and start working somewhere else and develop a new 30 years of seniority. Once you reach 55, 56, and are getting close to 60, it's over, and either the money is there and you're going to live a dignified retirement or you're on the borderline of poverty, and it's terrifying. I have an awful lot of constituents who are living in that world right now and I don't have an answer for them.

I want to compliment you on behalf of the people you represent. Though it's not going to change their world that you're here, it's going to make them feel good that you're taking every opportunity you possibly can to bring this issue before the public and to keep reminding people and keep reminding parliamentarians that this issue is there. To that degree, I compliment you for doing this for your colleagues. You found a hook in there, one little piece of this, so be it. This issue is big enough, and I compliment you for your leadership in making sure that you're out there every chance you get—and this is one of those chances.

You were here earlier and heard Mr. Topp talking about penalties as one of the things we're looking at, or disincentives. There are so many different ways to go that we've made no decisions yet, but what are your thoughts about those? They wouldn't have changed the world, but would they have helped? Having felt that you got "screwed", to use layperson's language, by your own parliament, or at least by the government of the day, would it have helped at all if there were some penalties to be paid? Or was the damage done, and you really don't care?

Mr. Donald Sproule: Penalties in terms of parliamentarians or the government?

Mr. David Christopherson: Penalties on the government. In other words, if the government did the same thing in the future, there would be penalties. They wouldn't be able to introduce bills, they wouldn't be able to advance their legislation. There would be internal parliamentary disciplines that they'd face.

Mr. Donald Sproule: I'm really not an expert or at liberty to say, but—

Mr. David Christopherson: But would it make you feel better to know that those were happening, or would that really not matter to you?

Mr. Donald Sproule: I think the key thing for me is to know that government is still functioning. I come back to the committees; that was the one thing that we wanted. We understand that it's a complex issue. We wanted to make sure the proper debate happened in the public domain, and that's why the continued working of the committees would have been of real benefit to us.

Coming back to what we're trying to do in putting this on a national agenda, we understand that it may be too late for us, for the

Nortels of this world. But you know what? There are the next poor suckers who are going to come along and be in our situation. We've been told that it's going to be too late for Nortel; but there is never a convenient time to make these changes, and that's why we want to make sure that this is on the national agenda and that the momentum continues.

Mr. David Christopherson: Absolutely.

Mr. Donald Sproule: Prorogation did not help.

Mr. David Christopherson: No, and I think this is great; you found something to say about prorogation, you got yourself in front of a committee, and you're fighting for those people you represent. God bless you; that's what you're supposed to be doing.

My last question is this. Would it make a difference, in your mind—again, maybe it would affect the outcome, or maybe not—for a question like that to be put to Parliament and everyone to get a vote on it? Or do you think the question should remain with the government and let them take the political heat for the decision, through accountability? Would you have felt better if every parliamentarian had had a chance to have a say and a vote on whether prorogation should happen?

Mr. Donald Sproule: Being the head of an organization with 17,500 pensioners, I'm now entering the political realm myself, and I think one of the key things is to understand what the people want. I would, then, support the idea of this going in front of Parliament and getting the wishes of Parliament tabled rather than it being a government decision.

Mr. David Christopherson: Very good. Thank you, sir.

Thank you, Chair.

The Chair: Are there questions from anyone else?

Seeing none, we'll go to our committee business.

Mr. Sproule, thank you for coming here today. I think the committee understands your plight.

Mr. Donald Sproule: Thank you very much.

The Chair: We're looking for solutions to prorogation too, at the same time. So thank you for giving us two things to work on.

Mr. Donald Sproule: All right.

The Chair: Thank you.

Just quickly, should I move in camera to do committee business, or is it okay if we simply have a discussion? I don't find anything about it that's.... It's scheduling issues that I'm going to talk about today.

First off, the Chief Electoral Officer has asked us to visit Elections Canada. This committee did that last year to see the running of the elections office. This year it's something to do with electronic voting, and some other stuff they'd like us to see. June 17 is the date they have picked for us to tour Elections Canada. When this committee did it the last time, we simply met there at 11 o'clock in our committee time and used a couple of hours to do so.

If I have the permission of the committee, I will go ahead and set that meeting up. It would be on June 17, so it would be the second to last meeting before we are out for the summer, if we follow the schedule as it stands.

Seeing no opposition, I'll move on to the next item.

You recognize that we're about to go on a constituency break week. As we mentioned at the last meeting, when we come back, we have the main estimates with the Speaker and the clerk and with the Chief Electoral Officer at our first meeting. At our second meeting the week we are back, our crackerjack staff will have a report ready for us on the use of electronics in the House, and we'll have to discuss that report and accept it or not, or whatever we need to do with it. That's a full two hours. We'll just call it committee business. That's on May 27. That's the week we're back.

We then have one more witness who has responded to us on prorogation, Professor Heard, from Simon Fraser University, who is one of the other experts. We have him scheduled for the first hour on June 1.

We're leaving the second hour of June 1 as a wrap-up hour for us to discuss direction to the analysts to start working on the report. They're already, of course—we know—mostly done; they just like to think they have lots of work left.

If we were to get a response back from any other witness, we would fill that half hour and then move that committee work off.

We're also expecting, of course, some legislation to come back soon to this committee, filling our other meetings between June 3 and June 17. If not, we will return to our study on the referendum act.

Are there questions on committee business?

Seeing none, I'll take that as approval for where we're headed.

We'll see you all in about 10 days.

Thank you very much. It was a great meeting today.

The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>