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Chair

The Honourable Larry Bagnell

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• (1100)

[English]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Good morning. This meeting is meeting number 10 of the Standing Committee on Procedure and House Affairs for the First Session of the 42nd Parliament.

This meeting is being held in public and is televised. Today in the first hour of our meeting we continue our examination of federal appointees to the Independent Advisory Board for Senate Appointments, pursuant to Standing Order 110 and 111.

In the second hour we will consider committee business, and that will be chaired by Mr. Blake Richards.

I remind members that in accordance with the Standing Orders of the House of Commons, this committee's role is limited to an examination of the qualifications and competence of the appointee to perform the duties of the post to which he or she has been appointed. Members may also refer to pages 1011-13 of *House of Commons Procedure and Practice* by O'Brien and Bosc.

Our witness this morning is Professor Daniel Jutras, who is appearing by video conference from Montreal.

Professor Jutras, you have up to 10 minutes for an opening statement, and then we will proceed to questions from committee members.

I don't know if you can see us, but the floor is yours if you can hear me.

Professor Daniel Jutras (Federal Member, Independent Advisory Board for Senate Appointments): I can hear you and I can see a general view of the room.

Thank you very much, Mr. Chair.

I'm grateful for the opportunity to appear before your committee. If I may, as you indicated, I would like to take maybe five or ten minutes to offer a brief opening statement.

I understand that the objective of your committee is to assess my qualifications and competence. I would like to focus on that, if I may.

[Translation]

As you have indicated, this meeting is being held to assess the contribution I can make to the work of the Independent Advisory Board for Senate Appointments based on a review of my career and

qualifications. I know you have my resumé in hand, but I would first like to take a moment to describe my career path to date.

I completed my studies in law at the University of Montreal and graduate studies in constitutional law at Harvard University in the mid-1980s. I have been a lawyer and member of the Quebec bar since 1984. I have also been a professor at McGill University's faculty of law for nearly 32 years.

My field of expertise is civil procedure, private law, and comparative law, but as you have also seen on reading my resumé, I have a long-standing interest in constitutional law. I was able to pursue this interest most recently when the Supreme Court of Canada appointed me to serve as *amicus curiae*, a friend of the court, in the context of the Senate reference and the constitutional amendment process.

In addition, from 2002 to 2005, I took leave from McGill University to act as Executive Legal Officer to the Supreme Court of Canada in the office of Chief Justice Beverley McLachlin. My task was to assist her in all her duties as justice and chief justice, except, of course, judgment drafting, which was her responsibility.

For example, outside the court, I was responsible for relations with the Canadian Judicial Council and the National Judicial Institute, which is the training body for federally appointed judges. Within the court, my responsibilities related to communications, media relations, management of the Law Clerk Program, for clerks appointed as research assistants to the court, and relations between the court, judges, and the various operational services of the court.

[English]

If you like, I'd be happy to answer questions on all of the elements of my CV which you have before you. I would like, before handing the floor back to you, to take a moment to try to connect my profile qualifications and competence to what I think might be helpful to the advisory board, and identify what I think those qualities might be.

It seems to me that key qualities to contribute to the work of the committee begin with a strong reputation of personal integrity, a reputation of sound judgment, and a reputation of absolute discretion. I want to underline that much of the work, in fact all of the work, I did with Chief Justice McLachlin and her colleagues at the Supreme Court of Canada, and within the Canadian Judicial Council as well, involved extraordinary confidentiality, significant confidentiality, and required a demonstration of sound judgment. And I don't think I would have been appointed to this position without a very strong reputation for personal integrity.

I point out that I think I have the respect of my peers and colleagues. I currently am the dean of the faculty of law at McGill and I'm also chair of the Council of Canadian Law Deans, and recently received the distinction of *Advocatus Emeritus*, which is awarded by the Quebec bar to distinguished members of the profession.

The second, I would say, and important qualification is independence and non-partisanship. I am not a member of any political party, nor am I a militant and haven't been.

Third, I think it's really critical to the work of the advisory board that its members have some experience with the evaluation of files, the ability to read CVs and letters of recommendation, to do so in both languages, to work effectively in a group in a collaborative manner, and I have to say this is pretty much my daily bread as dean. The work of the dean requires extensive participation and evaluation of confidential application files and candidacies, as well as work in groups and those kinds of assessments.

Finally, I would say it's useful to the work of the committee that some of its members, and ideally many of its members, have some understanding of the constitutional architecture of Canada, the role of the Senate, the legislative process at the federal level. The work I did in the Senate reference before the Supreme Court as *amicus curiae* obviously focused primarily on the amendment procedures, but in preparation for my oral argument and written briefs, I read just about everything that has been written in law and in political science about the Senate.

So even though the Senate was not my field of expertise at the time, and I think, to be fair, is not yet my field of expertise, I can fairly say that I have a significant interest in the Senate and parliamentary proceedings, and a good enough knowledge, I hope, to contribute significantly to the work of the advisory board.

With this, Mr. Chair, I'd be happy to answer questions, and I hand the floor back to you.

• (1105)

The Chair: Thank you, Mr. Jutras.

On this committee, we have a round of four different people asking you questions for seven minutes each. Then in the next round, people will have five minutes each. The time limit includes both questions and answers, so if they ask a one-minute question and your answer takes six minutes, they don't get to ask you any more questions.

I just wanted to let you know how it works here and that we're tight on the timelines so that every committee member gets a chance to ask you questions.

We'll start with Anita Vandenberg.

Ms. Anita Vandenberg (Ottawa West—Nepean, Lib.): Thank you, Professor Jutras, for being here today. You've obviously had a very distinguished legal career, and as you mentioned in your remarks, sound judgment and independence are things that would be very important in this position.

I wonder if you could elaborate a little bit on your background in law. Also, you mentioned that in your role as dean you do have to

evaluate CVs, letters of recommendation. Could you give us more information about how you do that and how you work collaboratively in doing that?

Prof. Daniel Jutras: Okay. I think the work in law is perhaps less relevant to the work of the committee than the second aspect of your question is, so let me be as brief as I can on the legal dimension.

My expertise, as I said, is in private law, comparative law, law of contracts, civil procedure, and law of wrongdoing, which is kind of remote from the conversation that we're having today, but nonetheless, as I mentioned, I have a significant interest in constitutional law. This was the focus of my graduate studies at Harvard Law School. I've kept up to date as much as I could, and also worked in some depth in constitutional law, in particular in my three years at the Supreme Court with Chief Justice McLachlin.

Very briefly, on the work of the dean and the ways in which this involves consideration of files, there are multiple aspects of academic life that require assessment of files, everything from admission of students to the process of promotion of professors and assessment of external institutions. Over the past seven years that I've been dean, I've assessed countless files with regard to promotion within my own faculty as well as several files from outside of my faculty. I've also done assessments and written letters of recommendation in a variety of contexts, both academic and professional. These were either to recommend university promotions and awards or to give professional recognition through such things as awarding the distinction of *Advocatus Emeritus*.

• (1110)

Ms. Anita Vandenberg: I see that you won the Queen Elizabeth medal in 2013. Can you tell us what that was for?

Prof. Daniel Jutras: I think the medal, if I'm correct in this, is awarded to about 60,000 Canadians, which is a significant number of people, and I'm just one of 60,000. So I don't want to play this up too much, although I'm very proud of this. I think it was a recognition of significant contributions in the field of law and in academic life as well.

Ms. Anita Vandenberg: You have a number of transferable skills, in addition to your legal background and your knowledge of the constitutional law, in terms of being able to bring people together, being able to assess, being able to judge different qualifications of various people. You spoke of the fact that, in addition to being dean of your faculty, you're part of a council of deans.

Prof. Daniel Jutras: Yes, indeed. All of the law deans in Canada gather around a table, which is intended to address preoccupations and concerns of the deans. I'm also the spokesperson for the Council of Canadian Law Deans. For the past two years I've been the elected chair of this particular council of all deans of faculties in schools of law in Canada.

Ms. Anita Vandenberg: You've been quite respected by your peers in doing that. Have you worked collaboratively? Could you talk about the collaborative work you've done?

Prof. Daniel Jutras: I do hope I'm respected. We work collaboratively, indeed. To give you an example, yesterday we worked together through email on drafting a shared statement on the faculties' response to the Truth and Reconciliation Commission's call to action. That requires quite a bit of collaboration and consensus. There are over 20 law schools in Canada, and we all have to agree on the text of this document, so indeed it requires quite a bit of consensus and collaborative work.

Ms. Anita Vandenberg: I see you've done a significant amount of work with the Supreme Court, including being personal secretary to Justice McLachlin. What do you see as potential transferable skills in terms of the work that you've done in the Supreme Court?

Prof. Daniel Jutras: The job of the executive legal officer is actually to be of assistance to the Chief Justice in whatever needs she may have. The Chief Justice, as you know, is an enormously busy person who has multiple responsibilities. In addition to her duties as a judge, she must run the court in operational terms as well as in collegial terms. She is the chair of the Canadian Judicial Council, which is the body that is made up of all chief justices of Canada and has responsibilities for all matters that are of significance to the judiciary. She also chairs the National Judicial Institute, which is, as I mentioned, the body that provides training to federal judges.

I think the transferable skills there are twofold. First, in this job, one has to be absolutely aware of the strict confidentiality of everything that happens within the institution. Of course, as you can imagine, being on the right-hand side of the Chief Justice in all of her responsibilities, sitting in an office right next to hers, helping her deal with the duties that I've just outlined, I was made aware of a number of things that had to be kept absolutely confidential. I think this is a transferable skill here, obviously given the significance of the process that we're engaged in and the need to preserve the privacy of the applicants and the confidentiality of the process.

The other dimension is that the Supreme Court is a very important institution in Canadian life and in our constitutional architecture. I think working in there, seeing the collegiality of the court and the way in which the court operates, gives me a pretty good idea of the ways in which individuals engaged in public life need to behave. I think I can apply that kind of understanding to my assessment of the files that we have before us.

• (1115)

Ms. Anita Vandenberg: Sound judgment, discretion, independence: are there other qualities you see that you have which you would be able to bring to this position?

Prof. Daniel Jutras: No, I think that would sum it up.

I think the one you didn't mention is my familiarity with the constitutional role and structure of the Senate and its place in the Canadian government. Again, I don't want to claim expertise in this area. This is a very, very complex field. There are many legal experts in Canada who know much more about the Senate than I do. But the work I did for the reference I think gave me a sound preparation for this.

The Chair: Thank you very much, Ms. Vandenberg.

Mr. Scott Reid is the next questioner.

Mr. Scott Reid (Lanark—Frontenac—Kingston, CPC): Thank you, Mr. Chair.

Professor Jutras, thank you very much. While you are a very accomplished person, I suspect you're probably somewhat socially uncomfortable reading off your resumé as this committee requires. I can appreciate the somewhat awkward position that puts you in. Being accomplished does not mean one is an egomaniac.

The first question I want to ask you, just relating to today's subject matter, is whether or not you had the chance to watch the testimony of Minister Monsef last night before the Senate committee. It dealt to some degree with your mandate.

Prof. Daniel Jutras: I saw the first 20 minutes. I had a meeting after that, so I missed the rest. I heard the presentations of both ministers and I think the first two or three questions.

Mr. Scott Reid: It came out very early in the responses—in fact it may have been in Dominic LeBlanc's opening remarks—that you required some extra time in order to complete your submissions, and that they have not yet been made. Is that in fact the case, and do you have a deadline in mind of when you'd be making your submission to the Prime Minister?

Prof. Daniel Jutras: I'm not aware of—

The Chair: Sorry, hold on a second.

We have a point of order from Mr. Chan.

Mr. Arnold Chan (Scarborough—Agincourt, Lib.): The purpose of this examination today, Mr. Chair, is to look at the competency and the qualifications of the nominee. I'm not quite sure of the relevance of the questioning of Mr. Reid at this time, and whether in fact it is in order.

Taking into account, Mr. Chair, that you had provided some direction to the committee members at the beginning of this examination, I would again suggest that the line of questioning from Mr. Reid at this time is out of order.

The Chair: Mr. Reid.

Mr. Scott Reid: Mr. Chair, in response to that point of order, I will just observe that what is appropriate is if you think something is out of order then inform the witness that in your judgment, it's not necessary for them...that if they choose not to respond, it's up to their discretion.

I'll mention further that the witness has a very impressive record of having dealt with issues that require discretion. The witness is better qualified than anybody in this room to determine whether or not a question that one of us asks has the effect of putting him in a position of being unable to answer without violating his mandate.

I think that is the appropriate course of action. Actually not allowing the witness to answer and not allowing me to ask would be an inappropriate use of discretion.

The Chair: I'm going to proceed that way for the moment. To remind you of what the committee is allowed to do, I'm going to reread a passage:

The committee's role is limited to an examination of the qualifications and competence of the appointee to perform the duties of the post to which he or she has been appointed.

Based on that, you can choose or not choose to answer that question.

Prof. Daniel Jutras: Thank you, Mr. Chair.

I think it's possible for me to answer in a manner that connects the question to competence and qualification in the following way.

This is a demanding task, as I think members of the committee will understand. People who sit on the advisory board must have stamina, energy, and the ability to work promptly. I think my career until now demonstrates that I'm able to manage a very intense workload and to work as promptly as possible in the achievement of the mandates that I've been given.

• (1120)

Mr. Scott Reid: I actually did not mean that question, Professor Jutras, to suggest that you're incapable of moving quickly on issues. That was not the intent of the question. It was to determine when you expected to get back to the Prime Minister with your recommendations.

Do you feel that you're able to answer that question?

The Chair: You don't have to.

Prof. Daniel Jutras: Indeed. Thank you, Mr. Chair.

I'm not sure that it relates to the mandate of your particular committee. I can say that we're working as promptly as we can and will report in due course, having done due diligence in every respect.

Mr. Scott Reid: Thank you.

Mr. Chair, in the event that you continue to rule out of order questions that are germane to what's going on, what I'll do is, at the end of this witness's testimony, I'll be presenting a motion to invite him and the other members of the committee back to discuss these very issues that you keep on ruling out of order, because they are important. I'm just giving you notice of that, Mr. Chair.

The Chair: That's fine.

The committee has no choice. It cannot change its mandate for this particular meeting so much beyond that.

Mr. Scott Reid: No, but there is an overly restrictive interpretation, which I notice is being applied very aggressively to Conservative members that has not been applied to government members on this same matter. It's quite striking, Mr. Chair.

To the witness, you were the private secretary of the Chief Justice. I believe that she also chairs the committee that makes decisions regarding the Order of Canada. Were you involved in any way in that? I'm not asking you to get into the mechanics, but I'm just asking if you were involved in that.

Prof. Daniel Jutras: No, not at all. This is one mandate that she performs on her own.

Mr. Scott Reid: Thank you.

You mentioned that you had been involved as an amicus curiae with regard to the reference case. Was that on behalf of an organization or on your own behalf?

Prof. Daniel Jutras: The amicus curiae is appointed by the Supreme Court, so I was not advocating on behalf of any organization. I was asked by the Supreme Court, along with co-

counsel Mr. John Hunter from British Columbia, to present a brief and oral argument in addition to all of the briefs and oral arguments the court was receiving from a variety of attorneys general as well as intervenors in the Supreme Court.

The appointment came from the Supreme Court itself.

Mr. Scott Reid: You have mentioned at some length your ability to understand—you didn't put it quite this way but.... The concept of discretion is actually one that requires some degree of subtle knowledge to understand what it means and where its parameters are located, and I think that's what you were trying to point out.

Keeping that in mind, I'd like to ask you if some of the proceedings you're engaged in on the committee you're involved in cause you to face rules regarding discretion and what you can disclose in the future.

Would you regard that as including the number of nominations that occurred in each province during the phase one process? That is to say, would you say that you will not in the future be able to disclose how many nominations you received—not anything else—in each of the three provinces?

The Chair: Once again, that's a process question.

Mr. Scott Reid: No, Mr. Chair, you are wrong. That is going to a matter that the witness himself raised. He therefore is required to respond to this question.

The Chair: He's not required to because it's process, but he can if he wants to.

Prof. Daniel Jutras: Thank you, Mr. Reid.

I think I will simply refer you back to article 13 of our terms of reference, which require the committee within three months of submitting names of qualified candidates to the Prime Minister, in the transitional process as well as in subsequent processes, to provide a report then in both official languages, a public report, that will be given to the Prime Minister that will contain information on the process, including the execution of the terms of reference, the cost relating to the advisory board's activities, and more pointedly, statistics relating to the applications received.

We have not written that report at this point, but I think it's fair to say that we will need to ascertain the level of disclosure that will be required in that context.

Mr. Scott Reid: Thank you.

In the same regard, then, would you regard this as.... This is a matter that the minister was asked about, although I think after you stopped watching. It's the names of nominating groups. It's not the names of people who were submitting their applications. That clearly is intended to be confidential, but the names of nominating groups is a matter that I do not think is stated in your mandate as being confidential. Indeed, I think that when your mandate was written, the phase one process hadn't actually been dreamed up yet.

Would you be willing to include that in your information in your report?

• (1125)

The Chair: You have 10 seconds.

Prof. Daniel Jutras: I'm sorry. I missed the last intervention.

The Chair: I said that you have 10 seconds.

Prof. Daniel Jutras: Ten seconds?

Again, Mr. Reid, I would refer you back to the terms of reference and suggest that I don't think it's appropriate for me at this point to indicate in some detail what will be in that report before it's even written. I think it remains to be done at this point.

The Chair: Thank you.

The next questioner will be David Christopherson.

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

Thank you, Professor, for being here today. I appreciate it.

For the purposes of full disclosure, you probably know that my party and I don't have a lot of use for the Senate. We would just as soon see the thing disappear and be gone; however, that's not the view that's prevailing right now.

What I want to ask you is very similar to the questions I asked your colleague the last time. I accept your qualifications. Quite frankly, given that any Canadian can be appointed, I think that just about any Canadian can be on a board that approves those Canadians, so I have no problem with your qualifications. Certainly, from a professional point of view, if what's wanted is a 100% professional person, I accept that you're that person.

I do want to speak to the issue of competency, and I want to approach it this way. One of the things about a democracy is accountability. We on the House side have accountability built in every weekend when we're in our ridings, and certainly every four years in elections. It's not so in the Senate, but given the fact that accountability is an important trait of a modern democracy, what sorts of traits would you be looking for in candidates so that they would understand the importance of accountability? That would be part of their role. It's not just to be lawmakers, but to be accountable for what they're doing.

When you're interviewing people and making these decisions, what sorts of traits are you looking for in them that would give you the assurance that they understand that accountability is an important part of our Parliament, on both sides?

The Chair: Go ahead. You can talk about your traits and ability to do that, or whatever you want.

Prof. Daniel Jutras: I confess that I think that question is also slightly outside of the mandate of the committee, unless I'm mistaken in my understanding of what the topic of our conversation is today. I'm not sure I understand how your question relates to my qualifications and competence. Could you clarify that for me?

Mr. David Christopherson: Sure. You're the one who's going to be making decisions about people and whether they're in front of you. One of the things that I assume you're going to want to do is satisfy yourself that they can do the work and that they have the stamina to handle what can be a busy workload.

I'm suggesting that an important trait that Canadians want in senators is that they understand that accountability is part of being a parliamentarian. "Parliamentarian" covers both sides of Parliament, both Houses, so what I'm asking is, what are you looking for when

you're interviewing someone to satisfy yourself that they understand the importance of accountability?

Prof. Daniel Jutras: I think that goes to the mandate of our advisory board, as opposed to my personal qualifications and competence. The mandate of the committee is pretty clearly delineated in its terms of reference. I think the minister has made it very clear what the qualifications and merit-based assessment criteria are. Those have been made public.

I think that is one of the key features of the work we're doing. We're being as careful as we can to implement the criteria qualifications and merit-based elements that have been stipulated in our terms of reference.

Mr. David Christopherson: Yes, I have to tell you that—

Prof. Daniel Jutras: Including, I might add, the idea of a proper understanding of legislative processes and the role of the Senate and its place in the constitutional order of Canada.

Mr. David Christopherson: I'm not real impressed with these answers, sir.

I think it's very legitimate for me to ask you what you're looking for, because you're the one who's going to decide who our lawmakers are. It's not me. It's not the Canadian people. It's going to be this committee. You get to decide. All I asked you was how you are going to find certain traits—in this case, the trait was accountability—and all you want to do is play politics with it and tell me why you shouldn't answer the question. I don't understand.

It's a very reasonable question, Mr. Chair.

• (1130)

Ms. Ruby Sahota (Brampton North, Lib.): On a point of order, Mr. Chair, I believe the witness has done an excellent job at answering that question within the mandate of this committee.

Mr. Christopherson is badgering the witness and continues to do so.

Mr. David Christopherson: How can I be badgering when I can't get an answer?

All I'm asking... It's a very legitimate question. How can it not be legitimate to ask them what they think, as they're looking at someone making a decision?

Ms. Ruby Sahota: The answer Mr. Christopherson is looking for goes to the qualifications of the potentially appointed senator and not to the qualifications of the witness before us.

Mr. David Christopherson: I've played this straight, Mr. Chair, from the beginning of this process, even though we have no use for it or the Senate.

Unfortunately, the first engagement of games has come from the government's witness, who refuses and is trying to find a way not to answer a very reasonable question.

If I can't get the person choosing the senators to tell me how they're looking for accountability, how in the hell can we ever expect to have senators who believe accountability is part of being a parliamentarian?

The Chair: Well, you can ask—

Mr. David Christopherson: Yeah, crickets.

You know what? I'm done, and I'll support any action the Conservatives want to make to show everybody what a joke this is.

The Chair: The next questioner is David Graham.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

I was reading over your CV.

[*Translation*]

You have held three positions abroad as a visiting professor, namely at the Institut d'études politiques de Paris, Louisiana State University, and Université d'Aix-Marseille III. You also studied at Harvard University.

Could you tell us a bit more about your experience abroad and explain how that experience would help you contribute to the work of the advisory board?

Mr. Daniel Jutras: Could you repeat your question? I did not quite hear it.

Mr. David de Burgh Graham: You worked abroad on several occasions as a visiting professor and you studied at Harvard University.

Could you tell us a bit about that and explain how it is useful to your current work?

Mr. Daniel Jutras: Excellent. Thank you.

Like many academics at major Canadian universities, I had the opportunity to travel abroad to teach and give lectures. The interesting aspect of this experience was becoming familiar with the different cultures that are also part of the Canadian community. There are people in Canada who come from very different cultures and it is important, when considering their files, to be able to correctly assess the contribution they can make to an institution like the Senate.

Beyond that, there were rather academic lectures and courses that have no bearing on the Senate. This international experience is not in itself a fully relevant or essential part of my qualifications.

Mr. David de Burgh Graham: Thank you.

I also wanted to add that I will be sharing my time with Ms. Sahota.

You worked several years in private practice with the Borden Ladner Gervais law firm.

Since you have spent most of your career in the education field, I would like you to tell us a bit more about your experience in the private sector.

Mr. Daniel Jutras: Very well.

My position at Borden Ladner Gervais was not full time. I was legal counsel in that national law firm. I worked there after my time at the Supreme Court of Canada. I was hoping to gain a better understanding of class actions, in particular. As these are one of my areas of expertise, I thought it would be useful to get a better grasp of the realities of this phenomenon, to spend a few hours a week in a large firm. The people at the firm offered me the opportunity to work

with them on some class action cases, and that is what I did for three years. However, I did that while continuing to work as a full professor at McGill University.

Mr. David de Burgh Graham: Thank you.

There are several members on the board. Did you already know them? Had you worked with them before?

Mr. Daniel Jutras: Are you referring to the other members of the advisory board?

Mr. David de Burgh Graham: Yes, precisely.

Did you already know them? Had you worked with them before?

Mr. Daniel Jutras: No. I did not know any of the members before we started working together a few weeks ago.

Mr. David de Burgh Graham: Do you think there is a good dynamic in this board?

• (1135)

Mr. Daniel Jutras: I am extremely proud of being part of this board because its members are remarkable individuals. If you have the list in front of you, you will see that many of them are members or companions of the Order of Canada. I am not one of them. In any case, I can tell you that Ms. Labelle's leadership is absolutely outstanding.

[*English*]

The Chair: Sorry. Point of order.

Mr. Scott Reid: Who made the point of order, Mr. Chair, that caused you to stop that?

The Chair: I did.

Mr. Scott Reid: It's peachy that you agree. That's swell, but irrelevant. You just called a point of order, Mr. Chair. That's for us to do. It's not for you to start calling points of order.

The Chair: Mr. Chan, do you call that a point of order?

Mr. Arnold Chan: I'll call that a point of order.

Mr. Scott Reid: Mr. Chair, let Mr. Chan and others call the points of order. Let's not have you doing that.

Larry, I think you're an awesome guy, but you're not being an awesome chair. You're not being impartial at all. You've got to get back to being impartial. That's your job.

Mr. Arnold Chan: I was actually about to say that I don't think that last question was actually relevant either. To be fair, I'm calling a point of order on my own side here because I actually think it goes beyond the mandate of our examination.

Mr. Scott Reid: Arnold, I believe you believe that, and it may very well be that you were about to press the button, but you hadn't done it yet, and that goes to our Chair being impartial at all times, which is not what's happening right now.

The Chair: The Chair gets to rule on various things, Mr. Reid.

Mr. Graham.

Mr. David de Burgh Graham: I'm ready to pass on to Ms. Sahota, if she'd like.

Ms. Ruby Sahota: Professor Jutras, thank you so much for being with us here today.

I'd like to go back to your appointment as amicus curiae to the Supreme Court and your experiences. Could you talk about something particular that you learned from that argument and what you bring from that to this appointment to the independent advisory board?

Prof. Daniel Jutras: As you know, the reference to the Supreme Court that I participated in was primarily a reference about the amendment process under part V of the Constitution Act, determining the level of provincial support that had to occur under our Constitution in order for certain amendments to the Constitution to be made, particularly amendments that relate to the structure of the Senate, all the way to the issue of the abolition of the Senate.

As I've said in another setting, it would be fair to say that it was more a reference about the constitutional amendment process than a reference about the Senate itself. The Supreme Court was not charged with the mandate or responsibility to assess various proposals for Senate reform, but asked under the reference to determine what processes for amendment needed to take place.

That was really the focus of the work that I did as amicus curiae, focusing on the structure of the Constitution Act and the provisions for amendment of the Constitution that we are working with.

Nonetheless, it's fair to say that in understanding the kinds of issues that are likely to have arisen in that conversation, I had to become quite familiar with the historical record with respect to constitutional amendments on the Senate. Part of that obviously involves consideration of a variety of concerns expressed about the Senate, its current configuration and possible transformations for the future.

The thing that I might bring that might be relevant to an understanding of qualifications of individuals that would be appropriate senators, the understanding that I bring is this understanding that's based on having read very widely on the role of the Senate and on its position within our constitutional architecture.

The Chair: Mr. Richards.

Mr. Blake Richards (Banff—Airdrie, CPC): I appreciate your being here today. Conducting what's essentially a job interview after the fact and in public is probably an awkward situation. We appreciate your putting yourself through that.

Obviously, we've heard your qualifications. I think I would be able to speak for everyone in this room when I say we are quite impressed with your background and experience you have.

One thing I always find helpful in assessing someone is what they would do in certain situations. I like to put people through scenarios or situations, and ask what they would do. Given the fact that this process is already well under way, there is going to be some element where I can't really ask you what would or should you do. It's going to be what have you done because it's already well under way.

There are a couple of different aspects of the job that I see as quite important and that I'd like to get an assessment of your thoughts on. The first one is that we have two stages to this process. There's this first stage, a transitional process I guess we're calling it, and then there's going to be a transition into a permanent process.

When there are enhancements being made, which is what's been indicated on the Democratic Institutions website, to that process when it becomes permanent I would assume that in your role on the board you will have some opportunity to make recommendations or suggestions about what those enhancements would be.

I wonder if you could give some indication as to what are some of the flaws or challenges that you've seen in the process you've been undertaking up to this point, and what you think would be good changes to be made to that process going forward. It helps us to assess your ability to make those kinds of suggestions and recommendations.

• (1140)

Ms. Ruby Sahota: On a point of order, Mr. Chair, I think it's going to process once again and not to the competence of the witness or his qualifications.

Mr. David Christopherson: It's the way they were.

Ms. Ruby Sahota: It is. I should take that word "think" out completely, as in it does not follow the mandate.

The Chair: You can judge... We've been through this enough today. You can judge it, Mr. Jutras. Go ahead.

Prof. Daniel Jutras: I think I'll confine myself to saying it's probably premature for me to answer that question. The process is still ongoing. There will be a report to the Prime Minister under our terms of reference that will assess the process and identify some of the possible improvements, but I don't think I can identify them now. We haven't had that conversation as a board, and I would prefer to wait until that's done before addressing that issue.

Mr. Blake Richards: Okay. I'll respect that.

You had mentioned, I think, in response to an earlier question—I believe it was from Mr. Reid—that the report you would be giving as a board about those recommendations would be made public, so we will have some idea as to the enhancements the board is suggesting, and we'll know in public.

Can you confirm that you will be making that report public?

Prof. Daniel Jutras: That is my understanding. I think that is explicit in our terms of reference under article 13(3). The report must be made public under those terms of reference.

Mr. Blake Richards: I appreciate that. Thank you.

Maybe we'll move to another area that I think is fairly important. There's this idea of consultations that will take place with various groups in the transitional process, and I'll quote from it. It "could include groups which represent", and then it has a variety of different groups it could represent. Then it indicates that would be to ensure that "a diverse slate of individuals, with a variety of backgrounds, skills, knowledge" are brought forward.

I'm trying to get a sense of your previous experience in undertaking those types of consultations with organizations. It's a difficult situation because you have already undertaken some of the process here. I want to ask a bit about what you would or should do, but in some cases I'm going to be asking what you have done because it's already under way.

How have those consultations been undertaken? How should they be undertaken? I'll ask both, I guess.

Have groups been approached, or have they been required to apply? Based on what criteria have those groups been chosen and should those groups be chosen? How would the board interact, or has the board interacted with those groups? In your view should those groups that are participating be made public?

Mr. Arnold Chan: Again, Mr. Chair, I'll leave it to the discretion of the witness, but I think the latter part of Mr. Blake's question again drifts back into current processes as opposed to.... I was fine when we were talking about previous experience, and I think that goes to the examination of the competency and qualifications, and I'll leave it to the witness to decide if he wishes to respond.

• (1145)

Mr. Blake Richards: Mr. Chair, it's quite clear I'm trying to ask what should be done, but obviously the processes are under way, and that's a reality. We can't ignore the reality that's under way. So to ask what should be done, I have to ask what has been done, because it speaks to what's the reality.

The Chair: Mr. Jutras.

Prof. Daniel Jutras: I don't think I want to answer detailed questions about what should be done for reasons that I outlined in my previous response to you. I think that assessment needs to take place once we're done with this particular transitional phase, and it's too early to address this.

I think it would be preferable given our terms of reference if the different interlocutors were addressed in the appropriate sequence. The terms of reference require us to report to the Prime Minister. The Prime Minister, I assume, under the terms of reference will make that report public. And I assume that given our terms of reference, the report will highlight every dimension that may be relevant in terms of making recommendations for improvement.

Mr. Blake Richards: May I ask you then whether these groups were approached or did they have to apply? On what criteria were the groups chosen and how has the board interacted with those groups?

The Chair: This is the last question.

Prof. Daniel Jutras: Thank you.

I think, again, those questions go to the process that will be reported on in the document I've just mentioned rather than to my qualifications.

I can refer back to what was said by our chair, Huguette Labelle, in her testimony before your committee, that the process was a very open one. As you know, the committee set up a website inviting nominations and applications, and I think it would be fairly easy for a person on your committee to identify the different elements that were engaged in by the committee in order to generate nominations and applications from very eminent Canadians and highly respectable Canadians.

The Chair: Thank you.

Our next intervenor, for five minutes, will be Ms. Petitpas Taylor.

Just before you start, I want to say to the committee that I am normally a very flexible person, but I have called every party out of order on this. We should be strictly sticking to what the Standing Orders say we're allowed to do, because hundreds of orders in council will be coming up, and some committees look to us as a precedent. So of all committees, we, as much as possible, should stick to the directions in the Standing Orders.

Ms. Petitpas Taylor.

[*Translation*]

Hon. Ginette Petitpas Taylor (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Good morning, Mr. Jutras. Thank you for coming before this committee.

Your professional skills are obviously up to par. Your resumé is very impressive. Could you talk a bit about your personal background and tell us how it will help you accomplish the tasks of the advisory board?

Mr. Daniel Jutras: I am not sure I understand your question. What do you mean by “personal background”?

Hon. Ginette Petitpas Taylor: We have heard quite a bit about your professional achievements, but I would like to know something about your personal qualities. Perhaps you could tell us more about that and about your personal background.

Mr. Daniel Jutras: That is a very difficult question. I am not sure I can give you an intelligent answer.

I am now part of an university environment associated with higher education. That is basically my professional life. That said, it may be useful to know that in my family, my generation is the first to have a university education. Neither my father nor my mother studied at university. Both my parents valued education enormously, but did not have themselves the opportunity to get that type of education.

On a personal level, I am an ordinary Canadian. I come from a middle-class family. My father was a municipal official and my mother a secretary in a school board. I completed my secondary education in a large high school, namely a public school on Montreal's south shore. I continued my studies at a public CEGEP in Quebec.

On a personal level, although my background is associated with academic life and institutions, there is an area of my life that is grounded in the reality of middle-class Canadians.

I do not know if I can tell you much more about this. I do not think the rest would interest you. Hobbies do not seem to be relevant to carrying out my duties in this board.

• (1150)

Hon. Ginette Petitpas Taylor: Indeed. Thank you.

In your view, which qualities are truly essential to carrying out your future duties?

Mr. Daniel Jutras: Since there is a lot of work to be done, I consider it essential to be efficient in evaluating files, and reading resumés and letters of recommendation. There is also the ability to spot certain key elements of a person's life in these documents. That is not always easy to do with documents filed before this kind of board to help assess candidate applications.

It is a bit like the exercise you are going through today. You have my resumé, which is four or five pages long, and you are trying to evaluate who I am and what my qualifications are. The experience of having read candidate applications is, in my view, truly relevant to the exercise.

That said, I will go back to what I was saying earlier. The fundamental qualities are in particular a reputation for impeccable personal integrity—and I think I can lay claim to this quality—good judgment, ability to work independently and in a non-partisan manner, and a good understanding of the Canadian constitutional structure and of the role of the Senate and the people who will be called to sit in that chamber when they are appointed by the Governor General.

Hon. Ginette Petitpas Taylor: Thank you.

[*English*]

The Chair: The next questioner will be Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you very much, Mr. Chair.

Thank you for taking our questions today, Professor. We do appreciate it.

I only have a few minutes, so I will be quick. It's unfortunate that we can't talk about the process, because I think with that under way, it's very important to get some answers on this. We can't talk about accountability, so using your experience, let's talk about the current makeup of the Senate.

You look around that room of current senators and you see all different backgrounds. Looking at the mandate letter, and what you're looking for, I'd like to say that education is very important but it's not everything, but I see it is weighted a lot toward the education part. I have a lot of business people in my riding who are very successful and have a lot of common sense.

How are you, using your experience, going to ensure that you're getting people not just from the academic side but also from other fields, who have a lot of common sense, I would say, but not a heck of a lot of letters after their names?

Prof. Daniel Jutras: Again, I think that goes primarily to the criteria that we were asked to use and not necessarily to my own qualification. I'm going to refer you back to the annex that was provided by the minister on qualifications and merit-based assessment criteria. I think they're well defined and they're not all focused on letters after people's names. I think there's a very broad range of merit-based qualifications that the committee is required to assess.

Again, I go back to what I said to your colleague a few moments ago. The exercise that we're engaged in requires the ability to make judgment about individuals. It's not that different from the one you're engaged in right now, making an assessment of my qualifications

and competence. I assume that not everybody in the room there is a person with numerous degrees. There must be a wide range of qualifications around your table, and I'm absolutely convinced that your committee is well equipped to make an assessment of my qualifications. I would say the same of my own competence to make that assessment.

Mr. Jamie Schmale: Thank you, Professor.

That also goes back to democracy and how we're elected. We're based on our constituencies and people making that decision of whether or not we are qualified. That's why I asked you. I don't want it to be a Senate of elites. I want to see a wide range of backgrounds. As I said, one of the main things that we keep going back to—and we heard it yesterday at the Senate committee—is education. How do we ensure there is, in your experience and your background, accountability and also that you are representative of all aspects of Canada, including those who may be successful in business but may not have a huge number of degrees?

• (1155)

Prof. Daniel Jutras: What I want to say on this is that you're interviewing me, obviously, but there's a large committee that is addressing this. We have three committees, as you know, provincially constituted committees of five, and there's a very broad range of expertise and competence in this very fine group of people. Obviously, I'm one person; I have a particular profile and that profile is not replicated in the other members' careers. Everyone brings to the table something enormously valuable in making exactly the assessment that you've just identified.

Mr. Jamie Schmale: We talk about it being a new non-partisan Senate, which I think is very difficult to happen, because in any group, whether you're in a minor hockey association or chamber of commerce, you always migrate towards people with similar trains of thought.

Using your experience in looking at all of these CVs and letters of recommendation, the minister said yesterday that political experience will not necessarily disqualify you from being a candidate. However, using your experience, how are you going to ensure that they actually stay non-partisan after the fact?

Prof. Daniel Jutras: Frankly, what happens after the fact is not something that the board can control. I'm not sure I can answer that particular question.

There are extraordinary Canadians from all walks of life who have applied for this, I can assure you. What we're trying to do, based on our own qualifications, is to make an appropriate assessment of the ways in which the individuals who have applied for this position meet the criteria that have been provided to us, the merit-based assessment criteria we must work with in making recommendations to the Prime Minister. That's the only thing I can say.

All of us are committed to abiding by the terms of reference and to doing this work very seriously. I think it requires each of us to step outside of ourselves for a minute and to think more broadly about those qualifications.

The Chair: The next questioner is Mr. Arnold Chan.

Mr. Arnold Chan: Thank you, Dean Jutras, for appearing before this committee. I want to reiterate what many of my colleagues around this table have indicated. We are incredibly impressed and thank you for putting yourself forward in public service in advancing this process that we are constitutionally bound to do.

I want to get back to some of your opening comments with respect to your experience, particularly as it relates to your experience in constitutional law. I note that you put on the record that this is not necessarily your core professional competence and that you focus more on civil procedure and law of contracts. I do want to explore your experience in the area of constitutional law in particular.

I recall in your opening remarks that you indicated this was a focus of your graduate work at Harvard Law School, and I note that you are a recipient of the Frank Knox scholarship, a very prestigious scholarship. I think my brother has one. I want to know more specifically about some of the research that you did, and how that might inform you in terms of the work you are doing now for this advisory board.

Prof. Daniel Jutras: Very briefly, my graduate studies at Harvard were a little over 30 years ago. The focus in constitutional matters, as you can imagine back then, was the Canadian Charter of Rights and Freedoms. This was the mid-1980s, and everybody with an interest in public law was particularly focused on human rights and constitutional guarantees for civil liberties. That was the focus of my studies back then.

I wrote my masters thesis at Harvard on the scope of section 1 of the Canadian Charter of Rights and Freedoms and possible interpretations of limitations to rights as flowing from section 1. I should say that this piece was written well before the Supreme Court jurisprudence evolved on section 1, and has become obsolete 30 years after the fact.

After this, I really kept my focus on private law for the longest time, until I went as the executive legal officer of the Supreme Court of Canada, where I had the opportunity to work on constitutional matters, both in relation to charter issues and in relation to the division of powers and institutional aspects of the Constitution.

Since that time, I've kept my interest in and read widely in this area, even though I don't now publish or engage in research in this area.

• (1200)

Mr. Arnold Chan: Thank you, Dean.

I want to look a little at your additional experience. You noted that you had been the principal investigator.... There was an anonymous research grant where you looked at rule of law in Russia.

Did that particular work get to the issue of division of powers, or help inform you in terms of dealing with bicameral parliaments or the drafting of constitutional processes, or the like?

Prof. Daniel Jutras: No. That work that we did.... This is a group of McGill professors who are engaged in this effort and the work that we did had to do with judicial structures, the administration of justice issues, and also corruption aspects or corruption controls that one might imagine for a federation like Russia. So no, the focus was not on division of powers or bicameral governance at all.

Mr. Arnold Chan: I myself might be straying into something that is out of order, but I'm going to ask, based on your understanding obviously as a lawyer and as a professor, would the decisions of the Independent Advisory Board for Senate Appointments be binding on the Prime Minister and the executive council?

That may be a procedural question.

The Chair: Sorry, but that's a procedural question.

Mr. Arnold Chan: Okay. I withdraw the question.

The Chair: We're past noon, but if the witness would indulge us, we had a few points of order that took up some time, and we have one round left of three minutes if you wanted to ask any questions, Mr. Christopherson.

Mr. David Christopherson: Oh, absolutely. We'll give it a second shot.

I'd just like to remind our witness that his chair answered all my questions. She had no problem. She didn't try to hide behind anything. She just answered as best she could. I accepted that. That's all I was looking for.

I want to come back again and try the same kind of question on a different matter, because the chair will rule me out of order if I don't. It is on the issue of the primacy of the House of Commons. Now, under the Constitution, on which you're an expert and know more about than most of us, there are certain rights that are bestowed on each House. The current practice has been, since 1867, that the Senate, with very, very few exceptions, is very careful not to thwart the will of the elected chamber, recognizing in deference the fact that we are elected and have that mandate.

Now, we did have a circumstance whereby Jack Layton, the former leader of the NDP, brought forward his environmental bill of rights, which I believe passed the House of Commons twice. It was sent to the Senate and without any debate, they killed it.

My question for you would be, when you're interviewing someone, what are you looking for from them in terms of how they see the division of power between the House and the Senate? Would you be wanting to hear that they would exercise a deference to the elected House, or would you be looking to hear from someone who says no, that if they're appointed, they will exercise every single constitutional right that a senator has?

Prof. Daniel Jutras: I think this is again a question that goes to process and a question that goes to the qualifications of individuals who will be appointed as senators rather than the qualifications of members, but let me try to answer it that way. The mandate of.... I'm sorry if I'm making you unhappy with my answers. I'm doing my best to address them within the mandate of the committee on which you sit.

Let me say this. The criteria that have been provided to us, the criteria that we work with, require us to assess very carefully the ways in which people meet the basic knowledge qualifications. I would say that those knowledge qualifications include not just the written mandate of the Senate, but also a sound understanding of its place in the constitutional order of Canada, and I think one would expect that it gets manifested in the way in which people describe their own profile, their own career, and their own expectations of the contributions that they might make in the Senate if they were selected.

•(1205)

The Chair: You have 30 seconds.

Mr. David Christopherson: I have another question. When you were doing your research, which was very impressive, did you do some research into the question of accountability and how senators should be more accountable? Did you study the aspect of a deference to the House of Commons out of respect to the Canadian people, who voted for the House of Commons? Did you research that, sir?

Prof. Daniel Jutras: As I said at the outset, this is not an area of scholarship for me. I have not published on the Senate. Indeed, I don't think you will find anything under my signature that would address the kinds of questions you're raising.

That being said, I'm quite familiar with the concerns you express, because those figure prominently in all of the scholarship that I was reading in preparation for my work as *amicus curiae* before the Supreme Court of Canada in the Senate reference. I'm quite familiar with those questions, indeed, although I have not published on them.

The Chair: Thank you.

Mr. David Christopherson: Could I just—

The Chair: Yes?

Mr. David Christopherson: I have no more questions—my time is up—but I just want to say, though, that I find it totally unacceptable. You sense my frustration. It's not acceptable for you to say that's what we're going to look for in the candidates. You're the one who is replacing the Canadian people's judgment, and you're deciding whether they have the qualifications or not, and your refusal to tell me what template you're going to use—

Mr. Arnold Chan: Mr. Chair, I think Mr. Christopherson is clearly out of—

Mr. David Christopherson: —further makes a mockery of an unelected Senate.

Thank you, Chair.

Mr. Arnold Chan: Mr. Chair, I have a point of order.

I think we should thank the witness. If Mr. Christopherson wants to continue this conversation with the committee after the witness has been dismissed, I'm willing to entertain him *ad nauseam*, but again I think we're done.

The Chair: I would like to thank the witness for coming. You're one of our first ones on this. We certainly appreciate your qualifications and your taking the time today to answer questions.

Good luck in your work.

Mr. Daniel Jutras: Thank you very much.

The Chair: We'll suspend while we change the chair and then go on to committee business.

•(1205)

_____ (Pause) _____

•(1210)

The Vice-Chair (Mr. Blake Richards): I will call the meeting back to order. We are still televised and in public of course.

We have a couple of motions to deal with. I will point out that the clerk does have a budget for the one brief study. I believe it's in relation to the advisory board. We've had a couple of meetings and one more that is planned.

My intention is that we would quickly move in camera at the very tail end of the meeting with just a few minutes to go, and we can deal with the budget. I think it can be dealt with fairly expeditiously. That would be my intention, unless the committee would like to direct me otherwise. We'd go quickly in camera to deal with the budget, so that we can do that. We would do that five or six minutes before the end of the meeting and make sure we're finished right on time. I know that members have other meetings to get to, and we have to make sure we wrap up right on time.

Having said that, I'm letting you all know what I expect to do and when. We have a motion that has been put before the committee. There have been some amendments suggested, and the debate when we were last on it was on those amendments.

You've all received it; it's been passed around. The track changes that show the proposed amendments have been passed around. I would entertain a speakers list on that debate.

Mr. Scott Reid: On a point of order, Chair, I had a motion as well that I wanted to introduce relating to today's subject matter.

I'm hoping that the mover of the motion, Mr. Christopherson, will indulge me in suggesting that I move this motion first. I can't imagine that it would not be a matter of consensus and easily dealt with.

It relates, of course, to bringing back the witnesses to deal with the substance that was not permissible under the standing order governing our meeting today, specifically Standing Order 111(2).

•(1215)

The Vice-Chair (Mr. Blake Richards): Okay, you have a motion you'd like to move.

I can add you as my first speaker. If you'd like to move the motion, you're more than able to do that.

The clerk has asked that if you do so, please read it slowly for us so that we can make sure it gets recorded.

Mr. Scott Reid: Certainly. I'll actually give you the text of the motion, because I have it written out.

The Vice-Chair (Mr. Blake Richards): Thank you.

The floor is yours.

Mr. Scott Reid: I guess my answer is that I'm first on the speakers list. Taking advantage of that, whereas members of the Senate advisory board have been, by reason of a provision of Standing Order 111(2), unable to answer questions relating to the administration of their responsibilities, I move:

That the federal members of the Independent Advisory Board for Senate Appointments

—that is to distinguish them from the provincial members—

be invited to appear before the Committee before the end of March 2016, to answer all questions relating to their mandate and responsibilities.

The Vice-Chair (Mr. Blake Richards): Thank you, Mr. Reid. The motion has been duly received.

We can proceed to debate on that motion if it's Mr. Christopherson's wish, because it would forgo his.

Mr. David Christopherson: Chair, I'm fine deferring my motion to allow this motion to come before it. Then we can jump back to my motion.

The Vice-Chair (Mr. Blake Richards): Okay.

I would entertain speakers to this motion.

I see Mr. Christopherson, and then Mr. Chan.

Mr. David Christopherson: Is Mr. Reid going to speak to his motion?

Mr. Scott Reid: I kind of did, I think, in the course of editorializing during Monsieur Jutras' presentation.

Mr. David Christopherson: Okay.

The Vice-Chair (Mr. Blake Richards): Yes. That was my understanding, that he had. Obviously he has the right to speak again, if he chooses.

Mr. Christopherson, you are first on my list, followed by Mr. Chan.

Mr. David Christopherson: I appreciate that. I don't intend to take too long, but you know what the Senate does to me.

I have to tell you that I didn't have the same problem in the first meeting that I had in this one. At the first meeting I asked, I believe, similar questions. I deliberately structured them in a way that I believed would get past the censorship of the government and pass muster with the Chair. That held the last time, so I can't see that my thinking was that far off. The chair of the advisory board, who has a lot more to be worried about than any of the members, answered quite quickly and openly. It's not necessarily what I wanted to hear, but she didn't make any attempt to not answer the question.

I don't want to cast aspersions against the previous witness; he sounds like an amazing academic and has made a wonderful contribution, but I have to tell you, it almost sounds like he was coached. Either that or he spends as much time keeping an eye on politics as he does on academia, because those were political moves. Most people don't normally have those at their fingertips.

Anyway, that's just an observation, not an accusation. I'll leave that there.

In terms of the substance of it, it is very frustrating and drives some of us insane that there are lawmakers chosen by the Prime

Minister rather than the Canadian people. We forever have senators pointing to their good deeds and the good reports they have. The response is that we can have all the good deed, blue-ribbon committees that we want, but what you don't do is make them lawmakers. That's the point.

In fact, I would remind colleagues that the vote of a senator is worth more than ours, because there are fewer of them. It takes fewer votes to win the second chamber than it does our chamber. Therefore, anything that involves appointing them deserves a lot of serious scrutiny.

I didn't attempt to play any games. I don't think I left the impression that I was playing any games. With the last witness we had, it was very straightforward. I did my thing, and when the time was up, I shut up and we moved on. This time I had a witness on an issue very close to my heart, who is only one of a handful of people who replace all 35 million Canadians in deciding who our lawmakers are, and the witness wouldn't give me a straight answer.

At least answer the questions. I'm surprised that he, as a lawyer, made a bigger deal out of why he didn't want to answer it rather than providing a good lawyerly answer that didn't give me an answer. Goodness knows, we watch question period; professionals do it every day. I'm as guilty. I did it in my time when I was a minister. The better you are at not answering questions without it looking like that, the more successful you are in question period.

I'm fully prepared to accept that as a way to deal with the question, but to start playing games on a question of was it right or wrong what the Senate did to Jack Layton's bill.... Whether you like Jack Layton or the bill or not, it came from the House of Commons and the Senate rejected it without even a debate. I think it's fair for me to ask somebody who's going to be doing the hiring of senators—not the electing, the hiring—what they would think of a witness in response to that question. Do they think it's acceptable? Would they be looking for a candidate, an applicant, who says, “Oh, I think it's fine. Constitutionally, they have that right and there's no problem,” or would they be looking for somebody to say, “You know what? I think that really crosses the line between, yes it's our legal mandate, but there is a deference to the House in recognition that it has the legitimacy of a mandate from the Canadian people”?

As flawed as that is, it's the best we've got. They don't have that. They do not have the legitimacy of being elected. We could be the worst MPs in the world but we have legitimacy, and I remind you that Canadians can fire us at the end of four years. We have a small group of people who are hiring senators that we have to live with for decades, because they can't be fired.

I will end where I began. I had no interest in playing games with this. Ask Mel. You'll know when I'm playing games with something. It's as obvious as hell and I say so right up, or at least I try to. I wasn't playing games and it wasn't my intent. I am incredibly disappointed that we got answers of avoidance from somebody who's going to play such a critical role in our beloved democracy.

•(1220)

That's why I'm going to support this motion. I want an opportunity to see if they're all going to do that. The chair didn't. If anybody was going to play games, it would have been the chair setting the precedent, "I'm not letting any questions come near here. We're going to stay this narrow." No, she was very open-minded. She understood where I was coming from. She didn't give me the answers I was hoping to hear, but she attempted to answer my question in what I thought was as fulsome a way as she could, recognizing where she was coming from.

I stand to be corrected but I don't believe I went after that witness in any kind of redirect in a serious way, maybe for clarification, but not the way I did today. I was very disappointed and borderline angry that someone who has the role they've been given to play in our society.... Whether they like me or my politics or not doesn't matter; as long as my question gets through the chair, it's a legitimate question on behalf of Canadians and deserves to be answered as best as possible, not to have someone use their scholarly skills to try to avoid answering the questions. That's what we do. They're doing our job when they do that. We play those kinds of games. There shouldn't be those kinds of games there.

I'll end it there. I'm not going to turn this into a filibuster, but I am going to underscore how things shifted for me today and I am now 100% behind the Conservatives in wanting to pull in as many people as possible and to look in every corner. With the way the government is playing this, I know in their heart of hearts they know this is bull. They have to do what they have to do, but I'm telling you that when we have witnesses on a subject like this who come in and start answering questions like that from someone who is trying to be fair-minded, then we're going to have trouble. My way of helping with that trouble is to support this motion.

Thank you, Chair.

The Vice-Chair (Mr. Blake Richards): Thank you, Mr. Christopherson.

Before we move to our next speaker, Mr. Chan, I will just read the motion. There have been a couple of requests for that. We have it finalized here. I'll read it very slowly.

That the federal members of the Independent Advisory Board for Senate Appointments be invited to appear before the Committee before the end of March 2016, to answer all questions relating to their mandate and responsibilities.

Mr. Chan, the floor is yours.

•(1225)

Mr. Arnold Chan: Mr. Chair, I'm going to start with the comments from Mr. Christopherson. I'm going to put it on the record that to some degree, I regret giving you and the members of the opposition as much discretion as you had on the line of questioning with respect to Madam Labelle. As I said, I could have objected, and I chose not to at the time.

The point I want to make, Mr. Christopherson, is that at the end of the day, we are prescribed by the current Standing Orders with respect to the conduct of this committee in respect to examining the qualifications and competency of a prospective appointee. These are not Standing Orders that I made up. These are Standing Orders that

are the current rules of procedure that govern what this committee can do.

I simply want to put that on the record. If we stay within the confines of the Standing Orders that all of us inherit.... If you don't like it, Mr. Christopherson, you have a right to subsequently propose to make the appropriate changes as we go through our processes of reviewing our Standing Orders, but my point is that at the present time we are simply conducting the business we are prescribed to do under the current Standing Orders.

With respect to the substantive motion that has been put forth by Mr. Reid, my personal view at the end of the day is that the questions you are ultimately concerned about, the government is more than transparent in granting you the opportunity to have the minister and his officials appear before this committee on March 10 to answer those particular questions.

As a result, from my perspective we will not be supporting—at least I certainly will not be supporting—this particular motion. You can ask the minister and her officials any questions you wish with respect to your concerns about the process, but at this time, we are charged solely with dealing with competency and qualifications. That is our mandate, and as a result we will not—at least I certainly will not—be supporting the motion.

The Vice-Chair (Mr. Blake Richards): We'll hear from Mr. Reid, and then Mr. Christopherson, you'll be next.

Mr. Scott Reid: Thank you, Mr. Chair.

I want to respond to Mr. Chan's comment. In his last point he said that looking at the qualifications is our mandate. That is our mandate, he said. Under the terms of Standing Order 111(2), which governs our meeting today, that is correct. The preamble is not part of the formal motion, but I read it out to you and the point was, of course, that governed us and that restricted us today. But given the fact that these are germane and important questions, another meeting at which we deal with these questions would be a time at which we could deal with those things. So, we are not, by the nature of this committee, by the nature of our mandate.... And there are some things we ought not to be looking at. We should not be asking about international human rights questions, defence questions, questions relating to the status of women or the Library of Parliament. Those things are outside our mandate.

But the actions of people like members of advisory boards are very much under our mandate. How we choose to deal with this is the subject of any individual motion we would bring forward. So, this new motion would allow us to fill in the lacunae that were left by the nature of the original motion. I have to say, going back to it, that had I realized such restrictions would be in existence under the original motion, I would have raised these objections at the time and sought to broaden our mandate, because I could have told you from the start that I actually thought the members of the advisory committee, whose CVs were posted online, were impressive. So the questions regarding their qualifications were, quite frankly, unnecessary. I didn't doubt their qualifications or their objectivity, but I do have questions about their mandate.

Of course, they have a system for reporting to the Prime Minister. But it is not unreasonable for us to want to get separate information about this. I want to stress this because I think it's an important distinction that might be lost on a casual observer here. The fact that individuals have a mandate to report to the Prime Minister does not mean that they are exempted from a mandate to report to us. That is a general mandate. The Prime Minister is, at least in theory, an agent of the crown, and that is distinct from the House of Commons. So, reporting to the House of Commons is something that is not exhausted by the fact that some form of mechanism exists for reporting to the Prime Minister, an expectation that you report back to the House of Commons and, indeed, to the Senate should it choose to conduct any hearings of its own and invite in these individuals. None of that is exempted. That is a reasonable thing to ask for.

That brings me around to Mr. Chan's initial comment, which was that they're letting us speak to the minister. I have to say that was an odd way of phrasing it, but I don't want to fault him for that. We have a right to question the minister. She is coming here at a time and place that is, frankly, inconvenient from our point of view. She should have been here earlier. Inconvenient—I should use that word advisedly; I don't mean.... It's untimely. She should have been here earlier. The Liberal members insisted on writing into our invitation that she come at a time that fits with her schedule. Well, frankly, that's the way these things are always written. Actually, it's implicit. If ministers don't want to come, we can't force them. So, maybe we should be grateful. Maybe we should be—I don't know—kissing someone's ring in gratitude for having been allowed to summon a witness before this committee. I don't think that is what is conventionally understood, that is what the public understands to be the case here. I don't think the public believes that the ministers are responsible to the crown and the House of Commons represents the peasantry waiting outside who may or may not be permitted by the grantees to ask deferential questions, to humbly beseech a minister of the crown for a question. I think quite the contrary.

• (1230)

I know the minister, who I actually like a lot. I kind of think she likes me too. She gave me her little pink flower yesterday because I forgot to wear a pink shirt. That's pretty cool.

Mr. David Christopherson: That's respect.

Mr. Scott Reid: I'm glad I got that on the record. It was a nice thing she did. I appreciated that.

I think she doesn't view things this way, necessarily. Look, the important thing is this. The way their mandate is written, they're reporting to the Minister of Democratic Institutions. They're reporting to the Prime Minister.

I anticipate, when she comes here, the minister may well say that she can't answer this question or that question, that it's not in her remit, that it's not in her mandate letter. That is a separate mandate given by means of an order in council from the crown to these individuals. Not only ministers of the crown are commissioned by the crown, but many other people are as well. So is every military officer. So is every commissioner, every head of every board. Everybody who isn't commissioned by the House of Commons and Senate is commissioned by the crown. Most people who are out

there, those thousands and thousands of people working for the Government of Canada. They aren't answerable to her. Indeed, I think she would make a point of saying that they aren't answerable to her: they're supposed to be independent. The word "independent" is actually written into their title or at least it's written to all the talking points about their title and their mandate, and therefore, she can't answer.

What do we do then? We go back again, and beg and plead with Mr. Chan to, I guess, kiss his ring and say, "Could we please, humbly beseech you and the ministers, or whoever, to come back and speak to us".

What I want, and I may be speaking for some others here, is to have these individuals come back, because they do have a mandate and they are the only ones who can speak to their mandate.

While I respect Professor Jutras' discretion in choosing not to answer certain things certain ways, it seemed clear to me that what he was saying is that he was attempting—although it wasn't really his responsibility to do this—to be respectful of our mandate. In fact, he actually worded things to say exactly that, "the mandate of your letter", "the standing order under which you've convened this meeting".

Now, we would have a different meeting at which we would deal with all aspects of his mandate and likewise for the other two permanent members. That would include questions, such as the one that I raised before I was shut down by the Chair, which was: How many applications did you actually get? How many nominations did you get?

There are a series of things they can't answer. It's not their fault that any filled-out application or nomination form becomes a level B protected document. They really can't talk about that. That is why it's written in there. That's a secret that freezes them from saying anything on the nominal basis that harm would be done if the content of those letters was revealed. Of course, we would respect that.

We'd be asking: How many actual nominations did you get? I'm interested in knowing that because look at how this process was set up. This process was set up through a press release on January 29, 2016, that we would now be accepting phase one nominations. The whole process was announced at that time, a process which, until then, was a complete secret. We knew nothing about it. It's a process, I should add, that was designed by the government and not by the advisory board. That's just to lay the blame where the blame ought to be laid for this.

The phase one process was announced to the public on January 29, 2016, and we were told that nominations would be open until February 15, 2016. You can add it up. That is 15 days, if you count the 15th and if you count the 29th. You can check the date on the email when it was sent out. The 29th was a Friday, and Saturday and Sunday are on the weekend.

This information was not posted in the normal spots we'd expect to see it. It wasn't, for example, on the website of the Minister of Democratic Institutions. Knowledge that this process was in existence took a while to spread out. I didn't find out about it until I got an email from the minister after a weekend had gone by.

•(1235)

You can't get appointed under this process, and your name cannot be passed on to the Prime Minister by the advisory board unless (a) you've submitted your application, and (b) this brand new nomination that nobody knew existed isn't filled out by an officer of an organization. So, someone fills it out and says he's from such and such organization and has such and such a title.

Now, I'm involved in a number of charitable organizations. This very Saturday I will be chairing, as I do every year, the annual cystic fibrosis fundraising dinner in Ottawa. I volunteer in an organization, a community kitchen called The Table, and I host a fundraising dinner for them at my house every year. It's not because I'm special or important. It's just because that's what happens when you're a member of Parliament and have been around for a long time. But I do know a little bit about how organizations work.

Let's say for the sake of argument that one of those two organizations had wanted to put forward the name of someone, and they wanted to do it responsibly. What they would have to do is send out notice of a meeting. They would use their rules of order, and everybody has different rules of order, but I submit that it might be *Robert's Rules of Order*. Those are the most commonly used rules of order, and others are very similar with regard to notice requirements for board of directors meetings. It would normally take two weeks to summon a board of directors meeting. Maybe they didn't learn about this until Monday—but why would they learn about it? Do you think that the Cystic Fibrosis Foundation or any other organization like that spends its time hunting through the various outlets through which these notices are put out? No, of course they don't. So they might not find out about it immediately.

You call your meeting. February 1 is a Monday. We have to call a meeting, and we have a two weeks' notice requirement. When would that be? Well, two weeks from February 1...oh, that would be February 14, which is a Sunday. February 15 at noon is your deadline, so I guess if we had an extraordinary meeting on the weekend we could pull this off and then submit it on Family Day. Now, it's not Family Day in every province, but it is in Ontario, and one of the vacancies is in Ontario. I don't know whether it's Family Day in Manitoba and Quebec. I'm just not up on their provincial holidays. It's one of those areas that I haven't researched perhaps as well as I should.

But there you are. So it would be literally impossible to appoint or nominate somebody on the advice of the board of most organizations. It's practically impossible for virtually everybody. On the other hand, if you're just submitting that so-and-so who's an officer of an organization should nominate someone, supposedly on behalf of that organization, because that is the cover story, then that person's name could go forward. So why the preposterously tight deadline? Why the lack of notification?

Normally, every time something minor is announced by this government, supposedly a step forward in terms of democracy or consultation, there's a national press release, they're thumping it, and it's an epoch-making moment in Canadian democracy. But there's nothing on this except a press release, which is not followed by a press conference, not put on the normal websites, nothing.

Perhaps you can see why I want to know the number of actual nominations that were made. I'm interested in the number of applications too, but the number of nominations, I want to see that, because my guess is it was really, really small.

In Quebec, where you actually have to be representing a district of the province, the 24 districts of the Senate, it must be tiny. How tiny? I don't know, but it must be tiny.

Let's say for the sake of argument you were trying to design a system that was ostensibly open, that was ostensibly about inclusion, ostensibly about removing the prime minister's control, which he had in the traditional system. The Prime Minister advises, by convention, the Governor General on who should be elevated to the Senate, and by convention the Governor General always takes the Prime Minister's advice.

•(1240)

Okay. So the government is saying that this is a thing of the past here. We're doing things differently now. You submit your application. A board decides. They submit it to the Prime Minister. He chooses or doesn't choose, as he may see fit. But we want to have him choosing someone who's on the list as a way of showing our purity in this matter—and we only get a couple of names.

In fact, they only have enough names to make four or five submissions. The people on there would likely include those who knew in advance that this would be the system; those who were informed in advance. Now, those who knew in advance would therefore have.... Well, first of all, this would make a farce of the system. Certain people were notified. As tight a restriction as possible was placed upon the process to ensure that very few applications could occur. This would ensure that the names of the people the Prime Minister wanted are now going forward, are guaranteed to go forward, in phase one. I'm not saying this is true of the later phases. I'm saying this is true of phase one because of that ridiculously tight timeline and the novel innovation of the requirement for a nomination.

Any organization that knew could have dealt with this in advance. Did the organizations know? Well, in all fairness, the members of the advisory board won't know that, and probably the minister won't either. But it is reasonable to guess that this is the case—that some organizations indeed knew this would be happening, that some individuals knew this would be happening, that they knew to make their application and to have the nomination submitted at the same time.

Indeed, Mr. Chair, I will submit to you that it is beyond the realm of credible belief that you could have a situation in which the applicant and the nominating organization would not have known of each other and would not have been working in tandem. Can you imagine a situation, plausibly, where that would be occurring? I certainly can't.

Now, they know, and possibly they have been tipped off by the government ahead of time, that they should be doing something—all of which we can't ever know, because we are not allowed to summon the board members, or the minister will say it's outside of her mandate. So these individuals who are on the government's actual short list get rushed through.

I mean, if it's not plausible to believe that this is true in Ontario or Manitoba, think how implausible it is to believe that there wouldn't have been coordination in Quebec, where you actually have to be the owner of real estate in a specific senatorial election district, one of the old electoral districts of the province of Lower Canada way back before Confederation. In some of these districts, this is actually a real practical problem. It's hard to find available real estate, because these are districts that have very tiny populations. They were once populous. The land has been consolidated over time.

So this is just beyond the realm of plausible belief. The argument to be made here is this. It may very well be the case, when you have the government working closely in tandem...not with the applicant; that's fine. Or it may not be fine when you're pretending you weren't working with them, but it's fine constitutionally. Constitutionally, however, it is problematic, when you have a situation in which the nominating body or organization, or individual from that organization—president, chairman, or whomever—and we can't find out whether that was done....

Indeed, I'm not sure the advisory board is powered to make further inquiries and find out—I don't know—whether that person was speaking on behalf of the whole organization. Was there a vote taken? Was there a meeting of their board of directors? We don't know. We can't know. Maybe the advisory board doesn't know or can't know, although I would like to ask that question.

That the nominee, the applicant, is not in practice subject to a tremendous amount of limitation on his or her independence.... They had to compromise their independence in advance in order to get that name into the process. Maybe that's not true with someone who somehow managed to get in under the wire, discovering this at the last minute. Maybe that's not true there, but it has to be true of the people who were pre-selected by the government, as most certainly some individuals were.

Now, we can't ask about this here if Mr. Chan and his colleagues shut down our ability to bring back these advisory board members. If the minister says "I don't know"—and she probably won't know—it is outside of the Senate's ethics rules, as I understand it, to raise questions like this.

● (1245)

We can have individuals whose independence is being compromised, and the Supreme Court has been very specific—and I did hear Professor Jutras say some of this in his testimony today—in saying that it is a requirement that senators be independent, a term that is not found in the Constitution Act, 1867, but which is, as the court said, implicit in its architecture. They must be independent.

This could very well be a compromise to their independence and a compromise to their independence that is, through the nature of the process, kept secret from everybody so that we can't know how their independence has been compromised. That is an irreparable harm. That is why I want to get the minister here before rather than after the point at which these appointments are made.

And why did I ask Professor Jutras how long it would take? I asked because I want to find out. Minister LeBlanc said yesterday that they are taking a little bit longer than we thought, so there may be time to ask them if this is a problem before it's too late, because

they've had to submit the names. Perhaps this is why they are taking their time submitting the names. They have been stuck with a situation in which they don't think the candidates who are being presented to them are the right kind of candidates.

I'm not sure how they would express that, because I understand their requirement for discretion. But it may very well be something else on their mind. I wouldn't fault them if they didn't answer a question like that because that really would be a lapse of their discretion, but that implies that the rules that were designed for them are inappropriate, certainly when it comes to the first term round.

Finally, he said that he would be submitting a letter to the Prime Minister, or a report to the Prime Minister, that will be public. While it's reasonable for him to say, "I don't want to start making independent comments and I want to discuss this", I think he meant to say "discuss this with my colleagues", the other commissioners, first. That's a reasonable position, I think.

It is not unreasonable for them to know that we would likely be asking them questions like that an if they're all present, they could share something with us. It is not unreasonable for us to want to find out, rather than deferring to our betters and waiting for Justin Trudeau, in his imperial awesomeness, to look at this, see it first, and then let us peasants know what is permissible for us to know. We can all tug our forelocks, thank him for the privilege, and kiss the buckle of his shoe. That is not reasonable.

That's all I have to say. I'm not trying to filibuster on this. I would actually like a vote today, Mr. Chair, in part because we are going to be away for a week, and I don't want this motion to wait until then to be decided.

● (1250)

The Vice-Chair (Mr. Blake Richards): Okay.

Well, we have about five minutes before I'll have to suspend and move us in camera to deal with the budget, but I do have two speakers, Mr. Christopherson and Mr. Chan. If they can both be brief, we may be able to have a vote on your motion.

Mr. Christopherson, you're first.

Mr. David Christopherson: Thank you. It was good that Mr. Reid did that and said that he wanted that vote today. I was getting ready to settle in, so I'm glad you gave me an early cue that your preference would be a vote. That's fine; I'm okay with that.

I have a couple of things. First of all, I'll take this opportunity to remind the government that I am the one who went out on a limb when you put forward your clause that the minister would come in as her schedule permits. I raised the initial concern that this is what governments do when they want to have the flexibility to not have the minister come in a timely fashion. The government member...and I believed they were sincere, and they were so sincere with "are you kidding, we would never do that", that I supported it, if you recall. I supported the motion and said that I'm going to trust them. Well, Chair, look where my trust got me. We're still working on dates. I think we finally have one, but it's well after why the motion was moved in the first place. I wanted to mention that for the history.

Second, I want to ask Mr. Chan, through you, Chair...because my feeling was the witness today was almost pleading the Canadian equivalent of the U.S. fifth amendment in terms of not wanting to incriminate himself. I want to ask Mr. Chan where he sees the problem in asking somebody on that panel about competency. Why is it a problem to ask them how they view candidates? How is that not competency? Competency is the ability to do the job. Qualifications, nobody is questioning. The qualifications of all the candidates have been stellar and dizzying, with many letters after their names. It's truly impressive. I grant that to the government.

On the question of competency, it speaks to the ability of the individual in terms of how they see and do things. I'd like to know why it would be unacceptable to the government to be asking a question of someone under the rubric of competency and how they feel about, for instance, accountability in a parliamentary setting. I would ask him to be mindful of the time, unless he wants to filibuster. I was going to raise that when I had more time. I'll leave it rhetorical now if Mr. Chan wants to answer that, but that's where I'm having a problem. How is that not speaking to competency by asking someone on a particular subject how would they view this, and what were the traits and the characteristics they would look for in a candidate coming forward? To be told that this is not competency leaves me wondering what is competency if not that.

Those are my points. I'll defer to the time at hand so that we can have the vote.

The Vice-Chair (Mr. Blake Richards): Okay.

We have Mr. Chan, and we now have Mr. Graham added as well.

Mr. Chan, the floor is yours. I do hope that we can be brief and then we can have the vote it appears that the committee desires.

Mr. Arnold Chan: Thank you, Mr. Chair.

First of all, I wanted to get back to Mr. Reid's point before I turn to Mr. Christopherson's point, with respect to the ring.

I want to note on the record that my wife has just arrived. Jean, welcome.

The only time I defer with respect to the ring is the vow that I made.

With respect to the broader point, I would simply say on the record again, Mr. Reid, that we find ourselves in this situation because of the actions of the previous government. We're now faced with the potential of, I understand now, 25 vacancies for the Senate because the previous prime minister chose not to make appointments

for over two years. We are now faced with the situation where we have a constitutional requirement to have a functioning upper House, and where we need to appoint this large number of senators, including someone who will ultimately be the government's representative in the Senate, given that we have moved forward toward greater independence and recognizing the importance of the greater independence of senators. We are simply faced with this situation.

I would also note on the record that at the end of the day from a constitutional perspective—and this is why I raise the question and withdrew it, recognizing it was a process question—this advisory board's recommendations to the executive council and to the Prime Minister are ultimately not binding on the Prime Minister. It would fetter his discretion.

At the end of the day what we're trying to do is create a more open democratic process for people to apply into a process. Unfortunately, we're dealing with a problem we have right now on short notice with the interim process and subsequently trying to invite Canadians of exceptional competence throughout the land to consider serving in a public way on something that we are constitutionally mandated to do.

With respect to your question, Mr. Christopherson—

• (1255)

The Vice-Chair (Mr. Blake Richards): Maybe before you get to that, Mr. Chan, I'll just interrupt you. If the committee does wish to deal with the budget today, I would probably have to interrupt us at this point and suspend briefly to go in camera to deal with that. If the committee would rather use the last four or five minutes of our time today to continue with this, it is something we can do.

Mr. David Christopherson: Unless there's a problem, could we not just approve it with unanimous consent and be done in a blink? It shouldn't be controversial.

The Vice-Chair (Mr. Blake Richards): The budget has been put before you. Do I see any objection to the budget?

Mr. Arnold Chan: I'll move the motion. Could I have a seconder on the other side?

The Vice-Chair (Mr. Blake Richards): We don't even really need a motion, necessarily, if the committee has agreed to the budget as presented. It's all been put before you.

(Motion agreed to)

The Vice-Chair (Mr. Blake Richards): Thank you to the committee.

Mr. Chan has the floor. We have a few minutes left, but keep that in mind if we do want to see a vote today.

Mr. Arnold Chan: I have the floor back. Thank you.

Again, I want to thank Mr. Christopherson for raising these issues. I understand the angle that the third party, the New Democratic Party, has historically held with respect to the Senate. I understand the kinds of questions you have ultimately been presenting. At the end of the day, throughout the electoral process, we made it very clear that we have to comply, ultimately, with the Constitution rules as they stand, which is to have a functioning Senate. At the end of the day, if we do not appoint these senators, we ultimately will be left with a situation where we will have one chamber that is incapable of responding to the passage of legislation coming from the House of Commons.

I appreciate the point that you are ultimately making with respect to the issues of legitimacy and so forth. As I say, with all due respect, the NDP can rail all they want with respect to the Senate.

Mr. David Christopherson: [*Inaudible—Editor*]

Mr. Arnold Chan: I have the floor right now, Mr. Christopherson, so please. I granted you the courtesy to say what you wanted to say. I granted Mr. Reid 20 minutes to say what he wanted to say. I've granted you the courtesy many times in the past to keep going, so I now have the floor and I think I have the right to continue, to get the points I want to get out. Thank you, Mr. Christopherson.

● (1300)

Mr. David Christopherson: You're welcome.

Mr. Arnold Chan: Getting back to the point that I was making, at the end of the day, we have a constitutional requirement to have a functioning upper chamber so that laws of this land can ultimately be passed. That is what we're going through right now, to get a process in place that ultimately attempts to create greater confidence in Canadians with respect to a chamber of sober second thought, meanwhile respecting both the constitutional practices and the conventions that associate themselves with respect to the appointment of senators, so that we don't get into the situation Mr. Reid had previously noted, that we are somehow violating or engaging in a process that is ultimately ultra vires.

With all due respect, at the end of the day we're obviously trying to work within the confines and the framework of the rules that are presented here with respect to the Standing Orders. I would also note, too, that we've been open in terms of allowing witnesses to appear before this committee, including the three federal appointees. By the way, it's something that the previous government never allowed. They shut down every single motion to call witnesses before committees for review, because they didn't want their witnesses to be subject to that kind of scrutiny. Ultimately, we are dealing with the terms that are set out under Standing Orders 110 and 111. That's the situation we're faced with.

Again, as I said earlier, as we go through the process, this committee will ultimately have the opportunity to review the Standing Orders. If you don't like the way they're written right now, we can make and propose those changes through that appropriate process.

Let's not rewrite the rules now simply because you find them inconvenient because you have a different political point to make.

Also, to answer your question with respect to what is competence, I think if you actually listened carefully to the witness we had today, Dean Jutras, he made it very clear: "Look at my historical practice. Look at the kinds of circumstances and situations in which I dealt with these particular types of issues."

The Vice-Chair (Mr. Blake Richards): Pardon the interruption, Mr. Chan. We are at one o'clock. I have had some members tell me they do have other meetings they have to get to. I think we'll probably have to end here for today. It doesn't appear as though we'll be able to have a vote today.

Mr. Arnold Chan: May I just conclude my comments and then cede the floor?

The Vice-Chair (Mr. Blake Richards): How much time do you need, Mr. Chan?

Mr. Arnold Chan: No. Actually, I'm prepared to now cede the floor to Mr. Graham, but we'll take it up at the next meeting.

The Vice-Chair (Mr. Blake Richards): What I was going to suggest to help the committee with this, it appears as though we won't be able to have a vote today, unless we have consent to continue for some time. I know I do have members who need to leave.

Mr. Graham, do you wish to have the floor or can we proceed to a vote?

Mr. David de Burgh Graham: I'd be happy to start at the next meeting, if you'd like.

The Vice-Chair (Mr. Blake Richards): It doesn't appear as though I have consent from Mr. Graham to cede the floor to enable a vote, so we'll have to continue this.

I have a suggestion as a potential option. I see that on March 8 we have the other order in council appointee set for the first hour, and the supplementary estimates scheduled for the second hour. If the committee felt that we could shorten up each of those two things, go to 45 minutes or something along those lines for each of those two items, we could leave ourselves a bit of time at the end of that meeting to continue with this motion and have it dealt with.

I know there is some timeliness to it, given that it requires witnesses to be here prior to the end of March. It might be a good idea, given how little time we have in committee in March to try to deal with it.

Would this be agreeable to the committee, that we shorten those two to 45 minutes per panel, and then we could dispense with this during the March 8 meeting?

It sounds as though it would be agreeable, so we'll make that suggestion, and our clerk can make the necessary adjustments to the agenda.

Thank you all.

The meeting is adjourned for today.

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