



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# PARLIAMENTARY DUTIES AND THE COVID 19 PANDEMIC

Report of the Standing Committee on Procedure and  
House Affairs

Ruby Sahota, Chair

MAY 2020  
43<sup>rd</sup> PARLIAMENT, 1<sup>st</sup> SESSION

---

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

**SPEAKER'S PERMISSION**

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

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

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

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

Also available on the House of Commons website  
at the following address: [www.ourcommons.ca](http://www.ourcommons.ca)

**PARLIAMENTARY DUTIES AND  
THE COVID-19 PANDEMIC**

**Report of the Standing Committee on  
Procedure and House Affairs**

**Ruby Sahota  
Chair**

**MAY 2020**

**43<sup>rd</sup> PARLIAMENT, 1<sup>st</sup> SESSION**

## **NOTICE TO READER**

### **Reports from committee presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.



# **STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS**

## **CHAIR**

Ruby Sahota

## **VICE-CHAIRS**

Blake Richards

Alain Therrien

## **MEMBERS**

Hon. Omar Alghabra

Rachel Blaney

John Brassard

Eric Duncan

Hon. Kirsty Duncan

Mark Gerretsen

Hon. Ginette Petitpas Taylor

Corey Tochor

Ryan Turnbull

## **OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED**

Chris Bittle

Fayçal El-Khoury

Pat Finnigan

Garnett Genuis

James Maloney

Elizabeth May

John Nater

Christine Normandin

## **CLERK OF THE COMMITTEE**

Justin Vaive

**LIBRARY OF PARLIAMENT**

**Parliamentary Information and Research Service**

Andre Barnes, Analyst

# **THE STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS**

has the honour to present its

## **FIFTH REPORT**

Pursuant to the motion adopted by the House of Commons on Saturday, April 11, 2020, the committee has studied parliamentary duties and the COVID-19 pandemic and has agreed to report the following:





## TABLE OF CONTENTS

---

PARLIAMENTARY DUTIES AND THE COVID-19 PANDEMIC .....	1
Introduction.....	1
i. Standing Committee on Procedure and House Affairs’ study on Parliamentary Duties and the COVID-19 Pandemic .....	1
ii. Notable other decisions taken by the House of Commons related to the Committee’s study .....	3
Background.....	3
A. The COVID-19 pandemic in Canada.....	3
i. Overview of health data in Canada for COVID-19 .....	3
ii. Challenges posed by COVID-19 to in-person parliamentary sittings ....	4
iii. Health and safety workplace protocols put in place at the House of Commons in response to COVID-19 outbreak .....	5
B. Legal considerations of modifying sittings of the House in response to COVID-19.....	6
i. Parliamentary privilege .....	6
ii. Parliamentary privilege and the courts.....	7
iii. Quorum in the House of Commons.....	8
iv. Language rights in Parliament.....	9
v. Canada’s seat of Parliament.....	10
C. Procedural considerations of modifying sittings of the House in response to COVID-19.....	11
D. Technological and practical considerations of modifying sittings of the House in response to COVID-19 .....	12
E. Modified procedures at national legislatures in response to COVID-19..	13
i. Scotland .....	13
(a) Overview .....	13
(b) Changes to Standing Orders.....	14
(c) Future plans.....	15

(d) Pandemic response plan .....	15
ii. The United Kingdom .....	16
(a) Overview .....	16
(b) Hybrid House of Commons .....	16
iii. Wales.....	18
(a) Overview .....	18
(b) Changes to Standing Orders.....	18
(c) Challenges.....	19
iv. Australia .....	19
v. New Zealand .....	19
vi. United States.....	20
F. Modified procedures at Canadian provincial and territorial legislatures in response to COVID-19 .....	21
i. British Columbia .....	21
ii. Alberta.....	21
iii. Saskatchewan.....	22
iv. Manitoba.....	22
v. Ontario .....	23
vi. Quebec.....	23
vii. New Brunswick .....	24
viii. Nova Scotia.....	24
ix. Prince Edward Island.....	24
x. Newfoundland and Labrador .....	25
xi. Nunavut .....	25
xii. Northwest Territories .....	26
xiii. Yukon.....	26
Discussion .....	27
A. Observations and recommendations .....	27
i. Guiding Principles .....	27

(a)	Prioritize the health and safety of members and all individuals working on the parliamentary precinct.....	27
(b)	Temporary nature of procedural changes.....	27
(c)	Employ an incremental approach to expanding the House’s technological operations.....	29
(d)	Uphold the rights, immunities and privileges of the House and its members .....	31
(e)	Uphold language rights .....	33
(f)	Ensure accessibility of proceedings .....	36
(g)	Ensure digital security of proceedings.....	37
ii.	Legal and procedural matters.....	41
(a)	Quorum.....	41
(b)	Hybrid model for sittings of the House.....	42
(c)	Alternate locations.....	44
(d)	Order and decorum .....	45
(e)	Voting.....	47
(f)	Question Period.....	48
B.	Future work for the Committee on developing procedures and practices to be used by the House during similar emergencies .....	49
	APPENDIX A LIST OF WITNESSES.....	53
	APPENDIX B LIST OF BRIEFS .....	57
	REQUEST FOR GOVERNMENT RESPONSE .....	59
	DISSENTING OPINION OF THE CONSERVATIVE PARTY OF CANADA .....	61
	DISSENTING OPINION OF THE NEW DEMOCRATIC PARTY OF CANADA.....	71





# PARLIAMENTARY DUTIES AND THE COVID-19 PANDEMIC

---

## INTRODUCTION

On 13 March 2020, in response to the COVID-19 outbreak in Canada, the House of Commons unanimously adopted a motion that cancelled its scheduled sittings until 20 April 2020. Currently, the House stands adjourned until 25 May 2020. The decision to cancel sittings was extraordinary given that since 1867, the House generally has not altered its usual sitting schedule in response to domestic or global events or circumstances.

The House of Commons is the foremost deliberative body in the country. Its 338 elected members represent the geography and population of the entire country. In many ways, the buildings on Parliament Hill and its precinct are the constitutional, physical and intellectual embodiment of Canada's democracy. Even under challenging and difficult domestic and global circumstances, it is important that the House put forth its best effort to find ways to continue to meet.

### **i. Standing Committee on Procedure and House Affairs' study on Parliamentary Duties and the COVID-19 Pandemic**

On 11 April 2020, the House of Commons adopted an order of reference to instruct the Standing Committee on Procedure and House Affairs to study ways in which members can fulfill their parliamentary duties while the House stands adjourned over public health concerns caused by the COVID-19 pandemic.

Under this order of reference, the House proposed that the Committee include the following elements in its study:

- temporary modification of certain procedures;
- sittings in alternate locations; and
- technological solutions including a virtual Parliament.



For this study, the Committee is empowered to consider motions related to the adoption of a draft report, which must be presented to the House no later than 15 May 2020. In addition, the House's instructions to the Committee specify that

- the Committee may hold meetings for the sole purpose of receiving evidence related to the COVID-19 pandemic;
- the Committee must meet at least once per week, unless the Whips of all recognized parties agree not to hold a meeting;
- Committee members and witnesses must use either tele- or videoconference to take part in meetings;
- Committee members attending meetings by tele- or videoconference are counted for the purposes of quorum;
- Notices of membership substitutions pursuant to Standing Order 114(2) may be filed with the committee clerk by email;
- the Committee is permitted to receive evidence that otherwise exceeds the Committee's mandate under Standing Order 108;
- proceedings must be made publicly available on the House of Commons website; and
- any four members of the Committee may sign a meeting request and email it to the clerk of the Committee, following which the Committee must meet within 48 hours of the receipt of the request.

With respect to part (I)(iii) of the motion adopted by unanimous consent by the House on 11 April 2020, which states that "proceedings shall be made available to the public via the House of Commons website," the Committee wishes to call to the House's attention that some members of the Committee expressed deep concern that reviewing a confidential draft report during a public meeting adversely affected their ability to have a frank and open discussion about the report's contents and especially witnesses' evidence. However, other members of the Committee held the view that holding a public discussion about the contents of the draft report added transparency and accountability to the proceedings.

On 16 April 2020, the Committee began its study on the matter. It held nine meetings and heard from 38 witnesses. The Committee wishes to thank the witnesses for their

insights and valuable contributions to this study. The Committee also wishes to extend its sincere gratitude to all staff whose work supports the Committee, and without whose efforts and expertise this study would not have been possible.

Lastly, the Committee would be remiss in undertaking a study that examines elements of parliamentary government if it did not note that the origins of parliamentary government in Canada can be traced back to Nova Scotia, as the first part of Canada to secure representative government in 1758 and responsible government in 1848.<sup>1</sup>

## **ii. Notable other decisions taken by the House of Commons related to the Committee's study**

At its sitting on 20 April 2020, members of the House of Commons considered a motion to extend the suspension of scheduled sittings in the House from 20 April 2020 until 25 May 2020. The motion also established a Special Committee on the COVID-19 Pandemic, composed of the membership of the entire House of Commons, and sets out its sitting schedule for the period when the House stands adjourned.

The schedule calls for in-person meetings once a week, on Wednesdays. At these meetings, there will be a two hour and 15 minute period for questions to cabinet ministers, followed by Take-note debates. In addition, there will also be two virtual sittings of the House per week on Tuesdays and Thursdays with 95 minutes for questions. On all three days, meetings will commence with a period for ministerial announcements and the presentation of petitions.

## **BACKGROUND**

### **A. The COVID-19 pandemic in Canada**

#### **i. Overview of health data in Canada for COVID-19**

Due to the nature of the pandemic, statistics about the outbreak are constantly changing. As of 23 April 2020, Dr. Barbara Raymond, Public Health Agency, told the Committee that more than 38,000 cases of COVID-19 had been confirmed in Canada, with over 1,800 reported deaths. More than one-third of these cases are in individuals over the age of 60, and the virus has proven fatal in 4.5% of these cases. However, the rate of doubling of reported cases has slowed in Canada, from doubling every three to

---

1 Eugene A. Forsey, *How Canadians Govern Themselves*, 9<sup>th</sup> ed., Library of Parliament, Ottawa, p. 3.





four days in mid to late March to doubling approximately every five to eight days in late March to mid-April.<sup>2</sup>

As of 6 May 2020, the total number of cases in Canada was 62,458 and the number of deaths was 4,111.<sup>3</sup> The Committee notes that, currently, the statistical indicators of the COVID-19 outbreak continue to show that it remains a serious public health threat.

## ii. Challenges posed by COVID-19 to in-person parliamentary sittings

According to Canadian public health authorities, most person-to-person transmission of the novel coronavirus with an illness called COVID-19 comes from respiratory droplets.<sup>4</sup> These can be spread person-to-person from about two metres, while the virus can survive on surfaces for several hours to three days, depending on the conditions and other factors. Further, the virus has a long incubation period of one to 14 days, during which transmission can occur from those showing symptoms and those who are asymptomatic (including those who are pre-symptomatic and post-symptomatic).

In response to the domestic COVID-19 outbreak, federal and provincial health authorities have put in place protocols and restrictions on the public's activities. Those of relevance to the Committee's study include:

- maintaining a physical distance of 2 metres between two people;
- limiting the size of indoor and outdoor gatherings; and
- urging residents to, insofar as possible, shelter in their residences.

Other challenges posed to members seeking to physically convene together in one place to transact parliamentary business is that commercial airplane and train providers in the provinces and territories are operating at greatly reduced service in response to the COVID-19 outbreak.

Further, some provinces have imposed mandatory 14-day self-isolation periods for all individuals entering the province from another province. In these provinces, certain

---

2 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 11, 23 April 2020, 1115 (Dr. Barbara Raymond, Public Health Agency).

3 *Government of Canada*, "[Coronavirus disease \(COVID-19\): Outbreak update.](#)"

4 The contents of this entire paragraph are drawn from: *Government of Canada*, "[Coronavirus disease \(COVID-19\): Summary of assumptions.](#)" updated on 13 April 2020.

listed individuals are exempted from the self-isolation requirement, although members of the House of Commons are not explicitly listed as exempt.

Christian Leuprecht, Royal Military College of Canada, told the Committee that the COVID-19 outbreak was, in his view, the greatest test for the maintenance of Canada's democratic governments and constitutional order in at least 50 years.<sup>5</sup>

### **iii. Health and safety workplace protocols put in place at the House of Commons in response to COVID-19 outbreak**

In normal circumstances, the parliamentary precinct is the workplace setting for over a thousand individuals, including parliamentarians and their employees, parliamentary staff and security.<sup>6</sup> The number of individuals employed by the House administration required for normal sittings of the House and sittings with a reduced number of members is 55.<sup>7</sup> The Speaker of the House of Commons is responsible for the health and safety of those employed by the House administration, whereas members of the House are responsible for the individuals they employ on their staff.<sup>8</sup>

In response to the outbreak of the COVID-19 pandemic, the Board of Internal Economy (BOIE) instituted numerous prohibitions and protocols for the areas of the parliamentary precinct under the control of the House of Commons. These include closing buildings to the public and suspending public tours; suspending all committee travel and international travel; limiting access to buildings to only a small number of essential workers; and requiring employees of House administration, as much as possible, to work remotely.<sup>9</sup>

To protect those employees working onsite, additional measures adopted include increasing the cleaning of high-traffic areas such as entrances, elevators and handrails to three times a day; deploying additional hand-sanitizing stations and making sanitizing

---

5 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1740 (Christian Leuprecht, Royal Military College of Canada).

6 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 10, 21 April 2020, 1205 (Charles Robert, Clerk of the House of Commons).

7 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 14, 23 April 2020, 1540 (Michel Patrice, Deputy Clerk, Administration, House of Commons).

8 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 10, 21 April 2020, 1210 (Hon. Anthony Rota, M.P. Speaker of the House of Commons).

9 Robert, 1145.



wipes available to front-line personnel; and installing plexiglass barriers where physical distancing is not always possible. Although personal protective equipment has so far not been required for onsite staff, masks and gloves have been procured for use if public health officials revise their recommendations.<sup>10</sup>

The Committee considers such health and safety improvements to be an on-going pursuit. More recently, the Committee was apprised that chairs have been removed from the opposition lobby adjacent to the Chamber, doors are kept open where possible and “one-way” entrances and exits have been established. House administration also continues to work with simultaneous interpreters to find solutions to protect their health and well-being.

The Committee heard from several witnesses, notably the Speaker of the House and Dr. Raymond, that House sittings and ministerial briefings held in West Block during the pandemic have been in full compliance with public health guidelines as they relate to physical distancing.<sup>11</sup>

## **B. Legal considerations of modifying sittings of the House in response to COVID-19**

### **i. Parliamentary privilege**

Parliamentary privilege is the constitutionally protected set of rights and immunities that guarantee that parliamentarians are able to carry out their parliamentary duties and functions in an independent manner.

The underlying purpose of parliamentary privilege is to enable the institution to do its work. Parliament, along with its members, must have independence from the courts, and the Crown or executive, to perform its functions of surveillance and oversight over legislation, government policies and programs, and the finances of the state.

These constitutionally protected rights apply both to individual parliamentarians, as well as to Parliament itself and its component parts. Parliamentary privilege also applies to individuals who participate in parliamentary proceedings, such as witnesses and staff of the House of Commons.

---

10 Patrice, Meeting 11, 1105.

11 Raymond, 1120; and Rota, Meeting 14, 1540.

The well-established and judicially recognized categories of rights and privileges possessed by Parliament of relevance to this study include the House's right to regulate its internal affairs, control by the House over its debates or proceedings, and the House's disciplinary authority over members and non-members alike who interfere with the efficiency and dignity of Parliament.<sup>12</sup>

The categories of rights and privileges possessed by individual parliamentarians of relevance to this study include freedom of speech, and freedom from obstruction, interference, intimidation and molestation while engaged in work in the House.<sup>13</sup>

## ii. Parliamentary privilege and the courts

Courts in Canada, as well as the United Kingdom (U.K.) and other Commonwealth countries have consistently held that parliamentary privilege has constitutional status and forms part of the law.<sup>14</sup>

The existence of a category of parliamentary privilege can be questioned and reviewed by the courts. The courts can determine whether the category of parliamentary privilege continues to be necessary for a legislative body to function today.<sup>15</sup> In doing so, the courts will apply a broad test to determine whether the claimed category of parliamentary privilege remains essential to maintaining the efficiency and dignity of Parliament and its membership.

Once the existence and scope of the claimed privilege has been authoritatively established by the courts, it is for Parliament alone to determine whether the exercise of the privilege was necessary or appropriate.<sup>16</sup>

According to Phillippe Dufresne, House of Commons Law Clerk and Parliamentary Counsel, Canadian courts have recognized Parliament's autonomy and exclusive jurisdiction over its proceedings, which include the Standing Orders, sessional orders

---

12 Marc Bosc and André Gagnon, eds., "[Rights of the House as a Collectivity](#)," Chapter 3 in *House of Commons Procedure and Practice*, 3<sup>rd</sup> ed., House of Commons, Ottawa, 2017.

13 Ibid.

14 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 10, 21 April 2020, 1245 (Philippe Dufresne, Law Clerk and Parliamentary Counsel, House of Commons).

15 [Canada \(House of Commons\) v. Vaid](#), 2005 SCC 30, par. 29.

16 Ibid.



and Speaker's rulings.<sup>17</sup> In other words, the courts will not review parliamentary procedure.

Further, Benoît Pelletier, University of Ottawa stated that the legislative codification of the privileges, immunities and powers found in section 4 of the *Parliament of Canada Act* can exceed those existing in the U.K. because section 44 of *Constitution Act, 1982*, grants Canada's Parliament the exclusive right to amend its Constitution in relation to, among other things, the House of Commons.<sup>18</sup> Similarly, Cristine de Clercy, University of Western Ontario, and Joseph Maingot, former Law Clerk and Parliamentary Counsel, both stated that the House possessed the right to amend its internal rules to allow for virtual sittings.<sup>19</sup>

Mr. Pelletier also added that Parliament's constitutionally protected right of control over its own proceedings is reflected in sections 7 to 9 of the *Parliament of Canada Act* and must remain an essential feature of the House of Commons.<sup>20</sup>

### iii. Quorum in the House of Commons

Quorum, which is the predetermined minimum number of members who must be present, counts among the core requirements for a sitting of the House of Commons to be considered constitutionally and legally valid.

Section 48 of the *Constitution Act, 1867*, sets out that the presence of at least 20 members is necessary to constitute a meeting of the House for the exercise of its powers.

Mr. Dufresne told the Committee that the determination of how the constitutionally mandated presence of members is counted at a sitting of the House belongs to the

---

17 Dufresne, 1245.

18 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 11, 23 April 2020, 1305 (Benoît Pelletier, University of Ottawa).

19 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1850 (Cristine de Clercy, University of Western Ontario); and House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 30 April 2020, 1325; 1330; and 1335 (Joseph Maingot, former Law Clerk and Parliamentary Counsel).

20 Pelletier, 1305.

House alone under its authoritatively established parliamentary privilege over debates or proceedings in Parliament.<sup>21</sup>

The Committee heard legal advice from Mr. Dufresne on the House's quorum requirement that it summarizes as follows. The House of Commons possesses autonomy over its internal proceedings, and this autonomy is recognized by the courts. However, the courts possess a well-recognized role in reviewing legislation passed by Parliament to ensure it is consistent with the Constitution. Judicial interpretation of the Constitution by the courts has consistently employed an approach that is flexible and reflects the realities of modern life. This approach has been compared to a living tree, "capable of growth and expansion within its natural limits" and not "a narrow and technical interpretation or construction."<sup>22</sup> However, Mr. Dufresne added that it was possible that a court could disagree with his interpretation and that the most serious implication of a court finding that a proceeding of the House did not have the mandated quorum, using virtual presence, was that the impugned proceeding could be invalidated.<sup>23</sup>

The Committee notes that Greg Tardi, Institute of Parliamentary and Political Law, gave legal advice about quorum at his appearance before the Committee<sup>24</sup> that was similar, if not identical, in substance to Mr. Dufresne's. Mr. Tardi also added that, in his view, quorum ought to be viewed today as being based on participation, as a kind of virtual meeting of minds, rather than a simultaneous physical presence of members.<sup>25</sup>

#### **iv. Language rights in Parliament**

The right of individuals to speak in either English or French in the House of Commons is guaranteed by section 133 of the *Constitution Act, 1867*. This section states that both English and French may be used in the Parliament of Canada, and must be used for Parliament's journals and records.<sup>26</sup>

Further, language protections are included in the *Canadian Charter of Rights and Freedoms* (Charter), where sections 16 to 19 guarantee the equal status of both

---

21 Dufresne, 1250.

22 Ibid.

23 Ibid.

24 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 11, 23 April 2020, 1305 (Greg Tardi, Institute of Parliamentary and Political Law).

25 Ibid.

26 Constitution Act, 1867, s. 133.



languages in Parliament. These sections also mandate that all statutes, records, and journals of Parliament be published in both languages.

The *Official Languages Act* (OLA) confirms that English and French are the official languages of Parliament, and that the right to use either language in any debates or other parliamentary proceedings is protected. Part I of the OLA also guarantees the right to simultaneous interpretation in debates and other parliamentary proceedings.<sup>27</sup> The *Translation Bureau Act* provides that the Translation Bureau is in charge of ensuring the translation of parliamentary documents and the simultaneous interpretation of debates and proceedings in the Chamber as well as in committees.<sup>28</sup>

Further, a process was established for the use and recognition of Canadian Indigenous languages in the House of Commons. This process is found in the Committee's Report 66, in the 1<sup>st</sup> Session of the 42<sup>nd</sup> Parliament, which was concurred in by the House on 29 November 2018.

The Committee notes that increasing the complexity of House proceedings could result in the need for more simultaneous interpreters.

## v. Canada's seat of Parliament

The *Constitution Act, 1867*, sets out in section 16 that the seat of government of Canada is Ottawa, until the Crown decides otherwise.

Mr. Dufresne told the Committee that, in his view, there would be no legal impediment to the House deciding to sit elsewhere in Ottawa or in Canada.<sup>29</sup> He noted that the House previously sat in an alternate location in Ottawa (i.e. the Victoria Memorial Museum) following the ruinous fire of 1916 that reduced the original Centre Block to rubble.

Mr. Tardi expressed the view that in normal circumstances there is a legitimate expectation that Parliament should meet in Ottawa, but that such an expectation was refutable.<sup>30</sup>

---

27 *Official Languages Act*, Part I.

28 *Translation Bureau Act*, R.S.C., 1985, c. T-16.

29 Dufresne, 1250.

30 Tardi, 1305.



Dr. Raymond cautioned the Committee that a holistic approach ought to be used when considering any decision to change venues. She noted that numerous considerations needed to be evaluated before making such a choice. These included that individuals would be asked to work in an unfamiliar environment, and that the venue would have to be assessed for its ability to meet protocols for cleanliness and security, etc.<sup>31</sup>

### **C. Procedural considerations of modifying sittings of the House in response to COVID-19**

A member's parliamentary duties are numerous. In normal circumstances, the majority of the work carried out by members while in the parliamentary setting could be amalgamated into one of debating, legislating, representing constituents, the business of supply, committee work and holding the government to account. Further, a member's duties should be attended to in public, with access granted to the media, insofar as practicable.<sup>32</sup>

There are core elements of a parliamentary sitting or committee meeting. The inclusion of these elements would need to be considered should House procedures and practices be modified in response to COVID-19. They are:

- a presiding officer being present and empowered to, among other things, recognize members seeking to speak, maintain order and decorum, and settle procedural questions;
- quorum;
- the ability for members to speak, move motions and vote;
- a set of agreed upon procedures and practices to ensure business is carried out in an orderly and efficient manner, and that protect the ability of members to fully participate in proceedings;
- the presence of technical and support staff (e.g. procedural advisors, simultaneous interpretation, technical support, security, etc.); and

---

31 Raymond, 1125.

32 Pelletier, 1400.



- technological equipment to record proceedings and make them widely available to the public and the media in accessible formats.

It is also worth noting that during normal sittings of the House, a long-standing process exists for raising and resolving matters of privilege and contempts of Parliament.

#### **D. Technological and practical considerations of modifying sittings of the House in response to COVID-19**

During his first appearance before the Committee, the Hon. Anthony Rota, Speaker of the House of Commons, stated that House administration and its parliamentary partners remained committed to providing all necessary operational support for members to sit and hold meetings in a way that respects health and safety protocols.<sup>33</sup> But Mr. Rota noted that members needed to recognize that the House's technological and operational capacities were finite and that not everything was possible during this pandemic.

For example, for the House's first virtual committee meetings, the number of support staff was double that required for in-person meetings.<sup>34</sup> However, the Committee heard that the number of support staff required for sittings of the House remains 55, whether the sitting is held with 338 members or with a reduced number of members.<sup>35</sup> As such, the Committee is of the view that staffing requirements will likely fluctuate with the adoption of technology into the operations of the House's proceedings, and these requirements may well decrease as the technology improves and becomes more familiar to users.

Charles Robert, Clerk of the House of Commons, told the Committee that House administration was closely coordinating its support of members' work with the various party whips, to ensure that their requirements were being satisfied.<sup>36</sup>

The main technological concerns held by members of the Committee were that

- internet connectivity and speed vary throughout the country. This lack of connectivity would especially be the case for members representing rural or remote areas, who could potentially face internet-related challenges

---

33 Rota, Meeting 10, 1120.

34 Rota, Meeting 10, 1150.

35 Patrice, Meeting 14, 1540.

36 Robert, Meeting 10, 1155.

when seeking to attend virtual meetings or sittings. In appearing before the Committee, both Mumilaaq Qaqqaq, the member for Nunavut, and Niki Ashton, the member for Churchill—Keewatinook Aski, noted that inadequate internet connectivity could impede the ability of parliamentarians in remote and rural areas to participate in virtual sittings. Ms. Qaqqaq said: “I can’t confidently say I could participate in a virtual Parliament or virtual committee if I were actually in my riding.”<sup>37</sup> Ms. Ashton stated that, “in setting up a virtual parliament, we must recognize that we are not all equal as MPs” due to the inadequate access to the internet in remote and rural areas.<sup>38</sup>

- cybersecurity risks needed to be closely evaluated and appropriate systems and measures put in place to secure and protect any virtual proceedings against disruptions and other intrusions by malicious actors. The Committee heard that there are always cybersecurity and privacy risks when using IT in the workplace.<sup>39</sup> These arise from the software used to hold virtual meetings, human behaviour and the hardware itself (e.g., a physical device that has been compromised).<sup>40</sup> As such, it is up to the organization to determine the acceptable level of these risks.

## **E. Modified procedures at national legislatures in response to COVID-19**

### **i. Scotland**

#### **(a) Overview**

The Scottish Parliament’s response to the outbreak of the pandemic was to ensure that Parliament could continue to meet in some capacity, to hold the government to

---

37 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1705 (Mumilaaq Qaqqaq, M.P., Nunavut).

38 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1715 (Niki Ashton, M.P., Churchill—Keewatinook Aski).

39 For example, see House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1755 (Martyn Turcotte, Director, Technology Analysis Directorate, Office of the Privacy Commissioner of Canada).

40 Leuprecht, 1735.



account.<sup>41</sup> On 1 April 2020, Parliament met with a reduced number of seats available to members seeking to attend in-person, to respect social distancing, from 129 seats to 79. During the sitting, members passed emergency legislation and elected an additional deputy presiding officer in case any of the presiding officers could not undertake their duties.<sup>42</sup>

On 9 April 2020, the Scottish Parliament broadcasted its first Leaders' Virtual Question Time, where opposition party leaders had the opportunity to question the first minister on the Scottish government's response to the outbreak.<sup>43</sup> The following week, Virtual Question Time was expanded to include up to 20 members.

The Scottish Parliament has also established an ad hoc committee to scrutinize the government's response to COVID-19, which is meeting virtually.<sup>44</sup>

After consulting with other assemblies in Europe, the Scottish Parliament opted not to use Zoom for virtual question time and committee meetings.<sup>45</sup> However, Bill Ward, Head of Broadcasting for the Scottish Parliament, stated that there was no particular increased risk for Zoom over any other platform and that "they all have similar vulnerabilities."<sup>46</sup> The Scottish Parliament is currently using the platforms vMix and BlueJeans for their virtual proceedings.<sup>47</sup>

## **(b) Changes to Standing Orders**

David McGill, Clerk and Chief Executive of the Scottish Parliament, told the Committee that Scottish Standing Orders restricted where chamber and committee meetings could

---

41 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 29 April 2020, 1135 (David McGill, Clerk and Chief Executive, Scottish Parliament).

42 Ibid.

43 McGill, 1140.

44 Ibid.

45 McGill, 1145.

46 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 30 April 2020, 1150 (Bill Ward, Head of Broadcasting, Scottish Parliament).

47 Ward, 1145.

occur.<sup>48</sup> Consequently, modifications and suspensions of several standing orders were made to permit virtual debates and committee meetings.<sup>49</sup>

For voting, the language in the standing orders was modified from “the electronic voting system” to “an electronic voting system.”<sup>50</sup> Mr. McGill explained that this “small but important change” gives the administration the ability to adopt any voting system that can be used remotely for chamber and committee votes.<sup>51</sup>

Mr. McGill added that determining the length of time that these modifications to the standing orders will be valid until has been a challenge because it was not clear when the public response to COVID-19 will end.<sup>52</sup> As it stands, these rules will remain in force until the summer, at which point the presiding officer may extend them if required.<sup>53</sup>

### **(c) Future plans**

Plans are underway to increase time allocated for questions during the upcoming virtual First Minister’s Question Time. The administration is also exploring ways to allow all members to participate, not just those who are listed to ask a question.

The Scottish Parliament is also working to expand the number of virtual committee meetings being held.

According to Mr. McGill, the major challenges the Scottish Parliament was facing going forward include finding ways to scrutinize legislation, hold online debates and vote virtually.<sup>54</sup>

### **(d) Pandemic response plan**

Mr. McGill noted that in December 2019 the Scottish Parliament had rehearsed its response for a future pandemic. He added that the purpose of the exercise was to identify which parliamentary services were absolutely crucial for Parliament to carry out

---

48 McGill, 1140.

49 McGill, 1155.

50 Note: In the Scottish Parliament, voting is normally done in plenary session by electronic means using consoles on each member’s desk and in committees by show of hands. See: McGill, 1135.

51 McGill, 1140.

52 McGill, 1155.

53 Ibid.

54 McGill, 1140.



its core functions, as well as the absolute minimum number of staff needed to deliver those services.<sup>55</sup> Recently examining these matters provided some assistance to the Scottish Parliament at the outset of the COVID-19 pandemic, however the plan had not anticipated virtual chamber sittings or votes.<sup>56</sup>

## ii. The United Kingdom

### (a) Overview

The U.K.'s House of Commons has adopted a number of measures to ensure that parliamentary business can continue while ensuring social distancing. The U.K. House of Commons is currently holding virtual committee and chamber meetings. In his appearance before the Committee, Matthew Hamlyn, U.K. House of Commons, said that the COVID-19 pandemic has resulted in "the biggest set of changes to the operations of the House of Commons in the last 700 years."<sup>57</sup>

### (b) Hybrid House of Commons

While the House was adjourned, the House administration worked closely with the Speaker of the House, the government and opposition parties to ensure consensus on the plans for setting up a virtual chamber.<sup>58</sup>

On 21 April 2020, the House adopted plans for a hybrid model for chamber meetings. Under this model, up to 120 members (note: the total membership of the House is 650) will be able to attend sittings virtually using the videoconference software Zoom, while the social distancing measures in place in the House would limit in-person attendance to about 50 members. Screens have been placed around the Chamber to allow "virtual" members to be seen by the Speaker and members present in the Chamber. Mr. Hamlyn stated that the 120-member figure for virtual participation was a "starting point" that was determined by technical limitations.<sup>59</sup>

---

55 McGill, 1210.

56 Ibid.

57 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 30 April 2020, 1105 (Matthew Hamlyn, U.K. House of Commons).

58 Ibid.

59 Hamlyn, 1150.

Mr. Hamlyn added that the hybrid model was selected because the Speaker did not want to forbid members from entering the chamber at Westminster, which he described as “a very ancient right.”<sup>60</sup>

The first hybrid session was held on 22 April 2020, which featured question time and Prime Minister's question time (i.e. only respondent is the prime minister). On this date, the House also passed motions to extend this hybrid model further to other parliamentary business including legislation. The House also agreed in principle to use electronic remote voting.<sup>61</sup>

Although the hybrid model attempts to replicate some chamber activities, Mr. Hamlyn noted that many practices have been adapted or dropped due to technical reasons. For example, he said that there are no longer interventions during speeches, there are published lists of speakers to ensure broadcasters know who to queue in, and deadlines have been extended for members to indicate they wish to participate in proceedings. The planning that goes into the broadcast of each virtual sitting is extensive, in addition to ensuring that those participating virtually have no technical difficulties.<sup>62</sup>

Mr. Hamlyn added that all MPs taking part in proceedings, whether in the chamber or virtually, are covered to the same extent by parliamentary privilege.<sup>63</sup>

Following his appearance before the Committee, Mr. Hamlyn sent correspondence to the Committee stating that the U.K. House had completed its testing on remote voting and that the system had been approved for use by members. The Committee notes that the system is based on an existing platform called MemberHub, which can be accessed by members and accredited staff. Access to the system is done through a single sign-on with multi-factor authentication. Further, it is for members to take personal responsibility to ensure the integrity of the system.

On 12 May 2020, the House adopted on a motion to extend until 20 May 2020 the temporary orders passed on 21 and 22 April 2020, regarding hybrid proceedings and remote voting.

---

60 Hamlyn, 1220.

61 Hamlyn, 1105.

62 Hamlyn, 1110.

63 Hamlyn, 1200.





### iii. Wales

#### (a) Overview

The National Assembly of Wales<sup>64</sup> (the “Senedd”) is presently holding virtual plenary and committee meetings. According to Siwan Davies, Director of Assembly Business of the National Assembly for Wales, the priority for the Senedd at the outset of the pandemic was to retain the ability of all members to question the executive.<sup>65</sup> As such, the Senedd focused its early efforts on ensuring the plenary could continue to meet.

#### (b) Changes to Standing Orders

The Senedd agreed to emergency modifications to its Standing Orders, including new recall provisions, a reduced quorum (from ten to four members) and weighted voting.<sup>66</sup> Under this method of voting, the Llywydd (the Speaker of the Senedd) calls a representative of each party group to cast votes on behalf of all members of the group, followed by independent members.<sup>67</sup>

The Senedd also adopted a provision to permit the election of a temporary presiding officer or a temporary chair of the proceedings in the event that the Speaker or the deputy were unavailable.<sup>68</sup>

Ms. Davies told the Committee that in establishing a virtual chamber, no specific changes to the Standing Orders were required. She explained that, “There is no specification of a place of meeting, and there is no requirement for members to be present, rather they are required to participate.”<sup>69</sup>

She added that the only statutory requirement that impacted the implementation of virtual proceedings was the requirement to hold bilingual proceedings (note: the Senedd

---

64 Note that on 6 May 2020, the National Assembly of Wales changed its name to Senedd Cymru or the Welsh Parliament.

65 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 30 April 2020, 1155 (Siwan Davies, Director of Assembly Business, National Assembly for Wales).

66 Davies, 1110.

67 Davies, 1115.

68 Ibid.

69 Ibid.

provides simultaneous translation from Welsh to English only<sup>70</sup>). As a result, the Senedd selected Zoom as its platform for its virtual proceedings due to it having multiple speaking channels for simultaneous interpretation.

### (c) Challenges

Ms. Davies noted that challenges arise when members are not in the same physical space as clerks and advisors. She added that there are also challenges around the maintenance of order during a virtual plenary.<sup>71</sup>

### iv. Australia

On 23 March 2020, Australia’s House of Representatives resolved to adjourn “until a date and hour to be fixed by the speaker” and the Senate resolved to suspend until 11 August.<sup>72</sup> Both chambers agreed to additional procedural changes, such as meeting “in a manner and for not otherwise provided” in the standing orders, to permit remote committee meetings.<sup>73</sup> Further, the Speaker of the House of Representatives announced special seating arrangements to provide more space in the Chamber.

On 8 April 2020, both houses met to pass emergency COVID-19 aid bills and then adjourned until a date to be fixed by the Speakers.

### v. New Zealand

On 25 March 2020, New Zealand’s Parliament announced:

To make sure parliamentary oversight and representation can continue in response to the COVID-19 outbreak, members have agreed to allow special epidemic procedures to be used during the lockdown period.<sup>74</sup>

Parliament adjourned until 28 April 2020 with some select committees continuing to meet remotely using video-conferencing. The House of Representatives authorized the Speaker to approve special arrangements for committees to meet remotely.<sup>75</sup> All

---

70 Davies, 1145.

71 Davies, 1120.

72 Parliament of Australia, [COVID-19 and parliamentary sittings](#), 2 April 2020.

73 Ibid.

74 New Zealand Parliament, [FAQ: Parliament during COVID-19 alert level four](#), 25 March 2020.

75 Ibid.



witnesses are expected to provide evidence by tele- or videoconference only and any exceptions to this must be approved by the Speaker of the House.<sup>76</sup>

New Zealand's Business Committee also made changes to the House's proxy voting rules as many MPs cannot travel due to the COVID-19 pandemic.<sup>77</sup> Typically, proxy votes may not exceed 25 per cent of the party's total membership in the House. On 25 March 2020, the Business Committee waived the limit for proxy votes until further notice.<sup>78</sup>

The Committee notes that the House of Representatives has met six times since 28 April 2020, including on 12 May 2020.

## vi. United States

It does not appear that the United States Senate has adopted any specific digital measures to carry out its activities as a result of the COVID-19 pandemic. A resolution was introduced in the US Senate on 19 March 2020 to allow members to vote remotely rather than coming to the Senate chamber to cast their vote and Senate practice does not require the presence of a quorum in the chamber while conducting daily business.<sup>79</sup> While the Senate continues to sit, this resolution is in the first stage of the legislative process (note: such a resolution would typically be considered by committee before possibly being sent to the whole House or Senate).

On 23 March 2020, the House of Representatives Rules Committee majority staff prepared [a report](#) outlining the potential challenges of remote voting. The top challenges outlined in the report include security, logistics and the constitutionality of remote voting.<sup>80</sup> It is worth noting that this report was prepared by the majority staff and has not been officially adopted by the Rules Committee.

---

76 New Zealand Parliament, *Select Committees*.

77 A proxy vote by a member authorizes another member to cast a vote or record abstention on that member's behalf. See: New Zealand Parliament, [Parliamentary Practice in New Zealand—Chapter 17 Voting](#).

78 New Zealand Parliament, [FAQ: Parliament during COVID-19 alert level four](#), 25 March 2020.

79 United States Congress, [S.Res.548 - A resolution amending the Standing Rules of the Senate to enable the participation of absent Senators during a national crisis](#).

80 U.S. House of Representatives Committee on Rules, Office of the Majority, [Majority Staff Report Examining Voting Options During the COVID-19 Pandemic](#), 23 March 2020.

On 7 April 2020, the Speaker of the House of Representatives announced that bills, resolutions and other submissions by Members to the Congressional Record may be accepted in electronic format, effective though 19 April 2020.<sup>81</sup>

## **F. Modified procedures at Canadian provincial and territorial legislatures in response to COVID-19**

### **i. British Columbia**

The Legislative Assembly stands adjourned until further notice. According to the Legislative Assembly's [website](#), committees including the Select Standing Committee on Finance and Government Services and the Special Committee to Review the Personal Information Protection Act are meeting virtually. No information is provided about how these virtual meetings will take place.

In the past, the Assembly has permitted the attendance of or participation by members of committees by either video- or teleconference, but it has not addressed this issue in a committee report or administratively.

The legislature's rules of procedure are silent on the provision for proxy or electronic voting during recorded divisions taken in the Chamber. Rather, members must be physically present in order to cast their vote.

The Committee further notes as of 11 May 2020, there were 2,330 total cases in British Columbia, of which 1,659 or 71% were recovered. There were 129 deaths. Currently, British Columbia remains in a state of emergency: non-essential businesses remain closed, large gatherings are not permitted and certain highway closures remain in place.

### **ii. Alberta**

The Legislative Assembly was [recalled](#) on 6 May 2020 and sat through to 8 May 2020. Following these sittings, the Assembly now stands adjourned. Meetings of the Standing Committee on Public Accounts are currently scheduled throughout May. Most of the Assembly's employees are teleworking.

By law, members of the Assembly are permitted to fully participate in committee meetings by telephone or other appropriate forms of communication. In the past, committees of the legislature have permitted its members to attend meetings via

---

81 United States House of Representatives, [House Floor Activities—Legislative Day of April 07, 2020](#).



teleconferencing. A member participating in this fashion is permitted to move motions and vote.

The legislature's rules of procedure are silent on the use of proxy or electronic voting. Rather, members must be physically present in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 6,253 total cases in Alberta, of which 4,389 or 70% were recovered. There were 117 deaths. Currently, Alberta remains in a state of public health emergency: non-essential businesses remain closed and large gatherings are not permitted.

### **iii. Saskatchewan**

The Legislative Assembly currently stands adjourned until such time as it is recalled by the Speaker at the request of the government. There are no committee meetings scheduled at this time.

Further, the Assembly's Rules and Procedures are silent on remote participation of members in the Chamber or in committee. Members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 564 total cases in Saskatchewan, of which 349 or 62% were recovered. There were 6 deaths. Currently, the province remains in a state of public health emergency: non-essential businesses remain closed, cross-border travel is restricted and large gatherings are not permitted.

### **iv. Manitoba**

The Legislative Assembly reconvened on 6 May 2020. One sitting day will be held each week in May, beginning on 6 May, and continuing on the 13<sup>th</sup>, 20<sup>th</sup>, and 27<sup>th</sup> of the month. These sittings will proceed on a normal schedule with a question period followed by government business.

The Rules of the Assembly, are silent when it comes to members attending sittings or committee meetings without being physically present. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 287 total cases in Manitoba, of which 247 or 86% were recovered. There were 7 deaths. Currently, the province remains in a state of public health emergency: most non-essential businesses remain closed

although some restrictions have been lifted, travel is restricted to the northern part of the province and large gatherings are not permitted.

## **v. Ontario**

The Legislative Assembly met on 12 May 2020, with its next sitting scheduled for 19 May 2020. All committee meetings have been cancelled until such time as the government House Leader informs the Speaker that it is in the public interest for standing committees to meet.

In Ontario, the legislature's rules of procedure are silent on the use remote attendance of members for committee meetings. Members must be physically present at meetings of their committees to participate. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 20, 546 total cases in Ontario, of which 15, 131 or 74% were recovered. There were 1, 669 deaths. Currently, the province remains in a state of public health emergency: most non-essential businesses remain closed although some restrictions have been lifted, and large gatherings are not permitted.

## **vi. Quebec**

In a [press release](#) from 5 May 2020, it was announced that the Legislative Assembly would be recalled for 13 May 2020. They will be sitting in reduced numbers and there will be two question periods each day. There will also be four virtual committees occurring as of the week of 4 May, and more will be added each week.

The Assembly's Standing Orders are silent on remote participation of members in the Chamber or in committee. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 37,721 total cases in Quebec, of which 9,526 or 25% were recovered. There were 2,928 deaths. Currently, the province remains in a state of public health emergency: most non-essential businesses remain closed although some restrictions have been lifted, inter-provincial travel remains restricted and large gatherings are not permitted.



## **vii. New Brunswick**

The Speaker of the Assembly has given notice that the Legislative Assembly shall meet on 26 May 2020 for the purpose of transacting its business.

The Standing Rules of the Assembly are silent with respect to allowing for members to attend sittings or committee meetings without being physically present. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 120 total cases in New Brunswick, of which 118 or 98% were recovered. There were 0 deaths. Currently, the province remains in a state of public health emergency: most non-essential businesses remain closed although some restrictions have been lifted, inter-provincial travel remains restricted and large gatherings are not permitted.

## **viii. Nova Scotia**

The Legislature currently stands adjourned and all Community Services, Health, Natural Resources and Economic Development, and Veterans' Affairs committee meetings are cancelled until further notice.

The Assembly's House Rules are silent with respect to the remote participation of members in the Chamber or in committee. Members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 1018 total cases in Nova Scotia, of which 749 or 74% were recovered. There were 47 deaths. Currently, the province remains in a state of public health emergency: inter-provincial travel remains restricted and large gatherings are not permitted. Non-essential businesses that can provide for social distancing have been permitted to re-open.

## **ix. Prince Edward Island**

The Speaker of the Legislative Assembly suspended the Assembly's spring sitting until further notice, in response to current public health concerns. Currently, there are no committee meetings scheduled.

The Assembly's Standing Orders are silent with respect to remote participation of members in the Chamber or in committee. Further, members must be physically present in the Chamber in order to cast their vote.



The Committee notes that as of 11 May 2020, there were 27 total cases in Prince Edward Island, of which 27 or 100% were recovered. There were 0 deaths. Currently, the province remains in a state of public health emergency: inter-provincial travel remains restricted and non-essential businesses remain closed.

#### **x. Newfoundland and Labrador**

On 5 May 2020, the House of Assembly passed a [resolution](#) to establish a Select Committee of Rules and Procedures Governing Virtual Proceedings of the House of Assembly. This committee has the authority to determine how virtual proceedings may be held and allows for proceedings to include any combination of members physically present in the chamber in addition to members present remotely by other technological means. The resolution calls for the report to be tabled with the Clerk of the House of Assembly as soon as possible, but no later than 1 July 2020.

The Legislative Assembly stands adjourned to the call of the Chair.

The Assembly's Standing Orders are silent when it comes to the remote participation of members in the Chamber or in committee. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 261 total cases in Newfoundland and Labrador, of which 244 or 93% were recovered. There were 3 deaths. Currently, the province remains in a state of public health emergency: large gatherings are not permitted and non-essential businesses remain closed.

#### **xi. Nunavut**

In a [press release](#) on 1 May 2020, the Speaker of the Legislative Assembly announced that the spring 2020 sitting of the 2<sup>nd</sup> Session of the 5<sup>th</sup> Legislative Assembly had been cancelled.

The Assembly's Standing Orders have no provisions to permit remote participation of members in the Chamber or in committee. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 0 total cases in Nunavut. Currently, the territory remains in a state of public health emergency: non-essential travel into the territory remains restricted and large gatherings are not permitted.



## **xii. Northwest Territories**

The Legislative Assembly remains recessed until 26 May 2020. The Standing Committee on Rules and Procedures met on 1 May 2020 by tele/videoconference.

The legislature's rules of procedure are silent on the use of participation by members at sittings of the Chamber or in committee. However, on occasion in the past, committees have agreed to allow members to participate in standing and special committee meetings via teleconference. Members participating by telephone are permitted to move motions and vote.

The Committee notes that as of 11 May 2020, there were 5 total cases in the Northwest Territories, of which 5 or 100% were recovered. There were 0 deaths. Currently, the territory remains in a state of public health emergency: non-essential travel into the territory remains restricted and large gatherings are not permitted.

## **xiii. Yukon**

The Legislative Assembly currently stands adjourned until 1 October 2020. Committee meetings are being scheduled to allow members to continue the work of the Legislative Assembly. The Legislative Assembly's committee room is equipped with teleconference and videoconference equipment that allow the Assembly's standing committees to conduct meetings with committee members participating remotely. Further, committees may meet in the Chamber as seating arrangements can allow for over two metres' distance between individuals.

The Assembly's Standing Orders are silent about the remote participation of members in the Chamber or in committee, however committee proceedings have continued in this manner. Further, members must be physically present in the Chamber in order to cast their vote.

The Committee notes that as of 11 May 2020, there were 11 total cases in Yukon, of which 11 or 100% were recovered. There were 0 deaths. Currently, the territory remains in a state of public health emergency: non-essential travel into the territory remains restricted and large gatherings are not permitted.

## DISCUSSION

### A. Observations and recommendations

#### i. Guiding Principles

##### (a) **Prioritize the health and safety of members and all individuals working on the parliamentary precinct**

In the Committee's view, the health and safety of members and all individuals working in the parliamentary precinct must remain a top priority. The Committee heard from Dr. Raymond that a very careful risk assessment should be undertaken before returning to a physical workplace, including a consideration of risks borne by additional staff onsite and families back home, and the risks related to travel.<sup>82</sup> The risk assessment should also include a plan for the rapid reintroduction of measures if further cases are identified.<sup>83</sup> She further cautioned that a change of venue is not simply a matter of spacing everyone out; an unfamiliar environment gives rise to additional questions including what would be required for cleaning and disinfection, handwashing, and controlling access to the premises.<sup>84</sup>

The Committee is also of the view that ensuring the physical and mental health and well-being of simultaneous interpreters working during the pandemic to interpret the proceedings of Parliament must be made a priority as well.

The Committee therefore recommends:

**That the health and safety of all individuals working within the parliamentary precinct and those working remotely be a priority.**

**That the House create a Pandemic and Disaster Plan, that all parliamentarians are aware of the plan, and that it is rehearsed and updated on a regular basis.**

##### (b) **Temporary nature of procedural changes**

Witnesses appearing before the Committee have been unanimous in their viewpoint that any changes made to the procedures and practices of the House of Commons

---

82 Raymond, 1145.

83 Raymond, 1155.

84 Raymond, 1125.



should be temporary and made in response to the challenges of the COVID-19 outbreak.<sup>85</sup>

The Committee notes that the first meeting of the Special Committee on the COVID-19 Pandemic took place on 28 April 2020. The Speaker, who chairs the special committee, told members of the Committee that he was impressed by the experience, both in terms of the functionality of the technology and the quality of the debate and exchanges.<sup>86</sup>

Comments made by witnesses about virtual sittings of the House and its committees prior to the first meeting of the Special Committee on the COVID-19 Pandemic included:

- a skeletal parliament is not a substitute for the breadth and depth of debate and deliberation, question posing, and responsibility to vote on bills and motions by all of our elected representatives;<sup>87</sup>
- virtual meetings should be used very sparingly and with the understanding that these are short-term measures taken during an extraordinary period, while much more future research needs to be done to fully understand the implications of such a change;<sup>88</sup>
- the House sittings with limited numbers of members, or virtual sittings, may not allow for “rigorous and healthy debate,” but a temporary solution is necessary given the current pandemic;<sup>89</sup> and
- while Parliament must find a way to function and remain active during this pandemic, it must also return to its traditional way of sitting in-person once the COVID-19 crisis has passed.<sup>90</sup>

Under the current circumstances, uncertainty remains as to the future sitting schedule of the House of Commons. Nevertheless, in the event that at some later date, proposed changes to the existing Standing Orders are put before the House for its consideration,

---

85 For example, see House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 11, 23 April 2020, 1240 (Emmett Macfarlane, University of Waterloo); and Rota, 1120.

86 Rota, Meeting 14, 1530.

87 Macfarlane, 1240.

88 de Clercy, 1855.

89 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 30 April 2020, 1250 (Hon. Gordon Barnhart, former Clerk of the Senate).

90 Barnhart, 1255; 1325; 1355.

the Committee agrees with the viewpoint expressed by the Speaker of the House that all members be permitted to attend the deliberations on such a matter and that all members be permitted to vote.<sup>91</sup>

The Committee therefore recommends:

**That the House of Commons establish an alternative set of Standing Orders which enables the implementation of a virtual Parliament so that the House can continue with its business in the event of a crisis or exceptional circumstances such as those arising from the current pandemic. The Committee further recommends that these modified Standing Orders only come into force with the agreement of all recognized parties for a predetermined, agreed upon, period of time and that this period can only be extended if all recognized parties agree.**

**That the Clerk of the House of Commons create and present a list to the Committee of all Standing Orders that may need modifying during the current event rendering the House of Commons unable to meet in its entirety in-person.**

**(c) Employ an incremental approach to expanding the House's technological operations**

During the month that the Committee has studied modifying its procedures in response to the COVID-19 outbreak, several House committees, along with a special committee composed of all members of the House, have held meetings.

The Speaker of the House told the Committee that the approach being taken by the House to deliver virtual committee meetings was to build technical capacity and improve functionality. At the same time, House administration was actively supporting members' participation through training, guidelines and testing.<sup>92</sup> The goal was to expand the types of procedures that can be made available to members during a virtual sitting to more closely resemble a typical sitting of the House and effectively engage the full participation of members.<sup>93</sup>

Mr. Robert added that practices for operating in a virtual environment were being developed to properly accommodate the requirements of members.<sup>94</sup> The goal was to

---

91 Rota, Meeting 10, 1155.

92 Rota, Meeting 10, 1120.

93 Ibid.

94 Robert, Meeting 10, 1300.



ensure that members became more comfortable using the technology involved in virtual meetings so that they can perform their duties properly and with satisfaction.<sup>95</sup>

In his second appearance before the Committee, Mr. Robert advised that the House's adoption of technology and temporary changes to the rules should be phased in gradually and slowly.<sup>96</sup> He stated that the first step is to ensure that members were satisfied with the overall plan for a virtual House of Commons, followed by a detailed consideration of procedures and practices, such as the rules about notice, the structure of the Order Paper and how other information was conveyed to members on their devices.<sup>97</sup>

The Speaker acknowledged that, as part of building the House's technical capacity to deliver virtual meetings and sittings, glitches and other IT difficulties could arise. He noted that such issues could potentially be time-sensitive and that this concerned him.<sup>98</sup> He also noted that members needed to continue to make themselves available, be patient and allow time to resolve difficulties.<sup>99</sup>

In his appearance before the Committee, Marc Bosc, the former Acting Clerk of the House of Commons, agreed with the House's adoption of a staggered approach. This would allow the House to build toward full resumption by allowing the necessary technology to catch up with the demands of parliamentary proceedings, while the health situation abates.<sup>100</sup> Similarly, Gary O'Brien, former Clerk of the Senate, stated that adopting a staggered approach served as a way to safeguard the fundamental values of Parliament as enshrined in the Constitution.<sup>101</sup>

The Committee agrees that the most effective and prudent approach to employing technology to meet virtually during the COVID-19 outbreak is for the House administration to continue to support members with training, advice and technical

---

95 Robert, Meeting 10, 1320.

96 Robert, Meeting 14, 1650.

97 Ibid.

98 Rota, Meeting 10, 1130.

99 Rota, Meeting 10, 1120.

100 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 11, 23 April 2020, 1340 (Marc Bosc, former Acting Clerk of the House of Commons).

101 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 13, 30 April 2020, 1340 (Gary O'Brien, former Clerk of the Senate).

assistance. The Committee also advocates for members to maintain reasonable expectations and demonstrate patience as the House's technical capacity builds.

The Committee therefore recommends:

**That the House of Commons undertake the necessary steps to expand its capacity and operations to achieve a fully virtual Parliament, with the possibility of employing a hybrid model in the interim, in the event of exceptional circumstances.**

**That an electronic system for requesting to rise on a point of order be put in place to avoid cacophony or situations where members whose language is not the same as the Chair's are not heard since their microphone volume is lower.**

**That an electronic system for determining the speaking order for virtual debates be introduced to replace the customary practice of having members rise in order to speak (Standing Order 17).**

**That the House of Commons conduct a mock virtual parliament exercise prior to the deployment of the platforms to be used for parliamentary business and that all members be invited to participate in any mock-ups.**

**That the House of Commons continue to take an incremental approach, during exceptional circumstances, to the adoption of added parliamentary activities by virtual means, recognizing capacity constraints, the need for testing, and the need for improvements, and that any added parliamentary activities be agreed upon by each recognized party.**

**That the Clerk of the House of Commons prepare and table with the Committee, a report on what and in which order House proceedings are ready to be implemented virtually.**

#### **(d) Uphold the rights, immunities and privileges of the House and its members**

It is essential that any modifications to the procedures and practices of the House made in response to the COVID-19 outbreak fully respect the rights possessed by members under parliamentary privilege. These include freedom of speech and freedom from molestation, obstruction or interference (i.e. unimpeded access to the parliamentary precinct) while engaged in work in the House. Further, in the exercise of the rights accorded by parliamentary privilege, members have the right to full and equal participation in parliamentary proceedings.



Witnesses described the importance of protecting members' full rights and ability to participate in proceedings as follows:

- maximizing what can be done virtually by a member is the best way to facilitate full participation during this ongoing emergency. However, no voters in any riding deserve to have a representative who can only fulfill part of their ordinary role;<sup>102</sup> and
- the privileges attached to political speech will be difficult to ensure and safeguard in virtual sittings and it is not clear how a member can dissent effectively in a virtual session when those who are not speaking are literally muted (have their computer microphone turned off).<sup>103</sup>

Some members of the committee also have concerns that breakdowns in technology could, however unintentionally, have adverse affects on members' ability to carry out their parliamentary work. To that end, Ms. Qaqqaq told the Committee during her appearance that she "100%" would feel at a disadvantage in her job if she had to rely on Internet services.<sup>104</sup> It was noted that, when asked by a Committee member if she had raised a question of privilege about this matter with the Speaker of the House, Ms. Qaqqaq responded that she had not, at that point.

However, the committee heard that no determination could be made at present about hypothetical potential breaches of a member's established rights under parliamentary privilege. Rather, witnesses such as Mr. Dufresne and Mr. Bosc cautioned that each case would need to be looked at individually by the Speaker and the House, based on each case's factors, circumstances and merits.<sup>105</sup>

According to Mr. Maingot, cases in which a member experienced difficulties in accessing virtual sittings would not constitute a breach of privilege unless they were obstructed. Rather, such cases would be considered technical problems that could be raised to the House.<sup>106</sup> Similarly, Mr. O'Brien submitted that, in his view, an obstruction that prevents a member from participating in parliamentary proceedings must be intentional to

---

102 Macfarlane, 1240.

103 de Clercy, 1855.

104 Qaqqaq, 1800.

105 Dufresne, 1300; and Bosc, 1320.

106 Maingot, 1325; 1330; and 1335.



constitute a breach of parliamentary privilege.<sup>107</sup> Mr. Barnhart expressed the view that technological failures would constitute a frustration rather than a case of privilege.<sup>108</sup>

In addition, in response to a question posed by a member of the Committee about whether members who were more susceptible to contracting COVID-19 (e.g. health issues, or more “at-risk” than the general population) could have their privileges breached by the obligation to attend in-person sittings, the Speaker replied that it was a possibility, provided they were prevented from doing their work in the House.<sup>109</sup>

The Committee therefore recommends:

**That the rights, immunities and privileges of the House and its members are upheld and respected.**

**That the House ensure that all members have access to the telecommunications infrastructure, including a consistent standard for hardware, software, and internet connectivity, necessary to attend virtual proceedings in their constituencies paid for through the central budget; and until that time, that members unable to connect to virtual proceedings in times they are necessary due to insufficient telecommunications infrastructure in their riding be compensated for travel to and provided the appropriate equipment and venue to participate in the virtual proceedings from a nearby location outside of their riding that has the necessary telecommunications infrastructure.**

### **(e) Uphold language rights**

The Committee is of the unequivocal view that all virtual sittings and committee meetings of the House, or sittings with modified procedures or in alternate locations, must be conducted in a way that fully respects members’ constitutional rights to carry out their parliamentary work in English and French, including the provision by the House of its usual simultaneous interpretation service.

Further, the Speaker of the House told the Committee that it is his view that members should also “continue to have access to established processes for the interpretation of Indigenous languages.”<sup>110</sup> The Committee agrees with the Speaker. The Committee also notes that it has not heard evidence about the technological capabilities of the House to

---

107 O’Brien, 1350.

108 Barnhart, 1355.

109 Rota, Meeting 14, 1555.

110 Rota, Meeting 10, 1120.



provide simultaneous interpretation for Indigenous languages during the pandemic. The Committee encourages the House to examine options for ensuring the processes for the interpretation of Indigenous languages continue during the pandemic.

In their appearance before the Committee, representatives from the Translation Bureau provided information about the ways the pandemic had affected their services. Whereas translation lends itself to remote work, this is not the case for interpretation services, which has meant that interpreters have continued to work on-site at the parliamentary precinct.

Further, virtual committee meetings have required interpreters to use remote interpretation. This occurs when one or more participants to a meeting are not in the same room as the interpreters. The Committee heard that remote interpretation poses challenges for interpreters, most notably those related to the sound quality of those speaking and cognitive load of those interpreting. Nathalie Laliberté, Translation Bureau, told the Committee that the current conditions were suboptimal for interpreters, who have reported an increased number of health issues such as headaches, earaches and fatigue.<sup>111</sup>

According to Greg Phillips, Canadian Association of Professional Employees (CAPE), of the 70 staff interpreters working in official languages, about 40 are currently unable to work either because of health issues related to these suboptimal conditions or because of childcare needs during the pandemic. In his view, the worse-case scenario of not having enough available qualified interpreters to support parliamentary work is “dangerously close.”<sup>112</sup>

To address these issues, the Translation Bureau has reduced the workload of interpreters, who will be working an average of four hours instead of the usual six hours. In addition, as noted by Nicole Gagnon, International Association of Conference Interpreters, freelance interpreters accredited by the Government can also be called upon to supplement the availability of staff interpreters.<sup>113</sup>

---

111 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1945 and 1950 (Nathalie Laliberté, Department of Public Works and Government Services).

112 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 14, 4 May 2020, 1410 and 1435 (Greg Phillips, Canadian Association of Professional Employees).

113 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 14, 4 May 2020, 1500 (Nicole Gagnon, International Association of Conference Interpreters).

Further, representatives of the Translation Bureau explained that interrupted interpretation services are a risk that cannot be completely eradicated in a virtual setting.<sup>114</sup> However, these risks can be mitigated by ensuring that:

- participants use headsets with an integrated microphone to improve sound quality;
- participants use videoconference to allow interpreters to see their facial expressions and adjust their tone;
- a technician is present with the interpreters at all times;
- sound checks are conducted ahead of meetings;
- participants provide written statements to interpreters in advance when possible; and
- participants use a hard-wired internet connection.<sup>115</sup>

These recommendations were generally endorsed by other witnesses who spoke about interpretation services, although Mr. Phillips noted that it may be more difficult for witnesses appearing before parliamentary committees to locate an appropriate headset than it is for members.<sup>116</sup> Ms. Gagnon also advised the Committee that there was an increased risk to interpreters from hybrid meetings, where some participants attend in-person and others join by phone.<sup>117</sup>

The Committee therefore recommends:

**That the House of Commons continue to respect the status and use of the *Official Languages Act of Canada*. Further, the Committee encourages the House to examine options for ensuring the processes for the interpretation of Indigenous languages continue during the pandemic.**

---

114 Laliberté, 1915.

115 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1955 (Matthew Ball, Department of Public Works and Government Services); and Laliberté, 1915.

116 Phillips, 1455.

117 Gagnon, 1430.



**That the House of Commons adopt a rule stating that any member or witness participating in any House proceeding virtually, including those proceedings that use a headset or microphone, must respect minimum standards to be set by the Clerk of the House in consultation with the Translation Bureau.**

**That the House adopt standards to help safeguard simultaneous interpreters against injuries and fatigue, including**

- **ensuring compressor-limiters are installed to prevent acoustic shock;**
- **undergoing a sound check with a coordinator and technician before each meeting begins, where possible;**
- **increasing the number of interpreters working into French, per assignment, because most of the work is into French;**
- **planning for sufficient time off between assignments to recover from excessive fatigue; and**
- **ensuring the previous two measures to sustain the interpreter pool are applied equally to Translation Bureau staff and freelancers.**

**That the committee make members aware that, during the COVID-19 pandemic, the burden of translation from English or French is higher for francophone interpreters, which could be alleviated by the choice of witnesses and members to use French when possible.**

#### **(f) Ensure accessibility of proceedings**

In accordance with the advice given by federal and provincial health authorities, the BOIE closed the House of Commons and the buildings of the parliamentary precinct to the public as a public health and safety measure during the COVID-19 outbreak. The Committee agrees that this measure was warranted and necessary.

At the same time, the proceedings of the House and its committees, regardless of whether or not they are held during the House's adjournment for the COVID-19 outbreak, must continue to be made available to the public, according to the usual standards, norms and practices established by the House.

The Speaker told the Committee that, in his view, video of the proceedings of the House taken during its adjournment for the COVID-19 outbreak should

- be accessible in French and English, with closed captioning;
- made available live and on demand through ParlVu; and
- continue to be disseminated to media organizations for broadcast, and to CPAC for distribution to viewers across Canada.<sup>118</sup>

The Committee agrees with the Speaker’s viewpoint.

Further, the Committee heard that the media play an essential oversight role of the House’s work and that media should be granted access to House proceedings in a manner in keeping with the established rights of the House of Commons under parliamentary privilege.

The Committee therefore recommends that:

**All public hearings of the House of Commons be made available through webcast and/or broadcasters, and that they strive for full accessibility.**

### **(g) Ensure digital security of proceedings**

During the COVID-19 pandemic, the number of individuals working from home has increased. The Committee heard that often the physical spaces and computer network at home are shared with others. For parliamentarians and their staff, the at-home workplace setting increases cybersecurity risks (e.g., physically compromising confidential documents, transferring confidential documents to personal devices or email addresses, sharing their government-issued electronic devices, divulging passwords).<sup>119</sup>

John Weigelt, Microsoft Canada Inc., noted that virtual Parliaments need to be secure enough to protect the integrity of proceedings against “unwanted disruptions by unauthorized individuals,” just as security is needed to protect the proceedings in the physical Chamber.<sup>120</sup> Robert J. Deibert, University of Toronto, argued that

---

118 Rota, Meeting 10, 1120.

119 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1730 (Chantal Bernier, Dentons Canada); House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1900 (Ronald J. Deibert, University of Toronto).

120 House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 12, 29 April 2020, 1925 (John Weigelt, Microsoft Canada Inc).



“parliamentarians and their staff are now at even greater risks” from cyberattacks, as “threat actors are capitalizing on this new environment” where people are increasingly required to work remotely.<sup>121</sup> Martyn Turcotte, Office of the Privacy Commissioner of Canada, also noted that “[t]here have been reports that the COVID-19 crisis has created new opportunities and motivations for cyber-attacks, which only increases the importance of ensuring there are adequate safeguards in place to protect against unauthorized breaches of personal information.”<sup>122</sup>

Still, witnesses agreed that where House proceedings are held in public, virtual meetings would not create privacy or security risks.<sup>123</sup> Chantal Bernier, Dentons Canada explained that unless proceedings needed to be held in camera, online sittings preserve the transparency of Parliament more than it creates information security risks.<sup>124</sup> Mr. Leuprecht added: “The deliberations that you are having are hard to mess with because they're real-time and they're open[...].”<sup>125</sup>

To minimize risks, Mr. Turcotte recommended:

- review the privacy policies and conditions of use of the proposed videoconferencing software;
- ensure that private messages shared during videoconferences remain private;
- if necessary, disable certain features to prevent uninvited individuals from joining the videoconference;
- ensure that confidential information is not revealed in the background when parliamentarians participate in videoconferences;
- use a new browser window without tabs if parliamentarians are participating in the videoconference from a web browser; and

---

121 Deibert, 1905.

122 Turcotte, 1750.

123 Bernier, 1730.

124 Ibid.

125 Leuprecht, 1735.

- adapt guidelines and procedures.<sup>126</sup>

Mr. Turcotte further added that using in-house or self-hosted services, as opposed to web-based services, would also minimize risks “as you have full control in terms of infrastructure.”<sup>127</sup>

The Committee was told that not all technological solutions would be equally suitable to support a virtual Parliament. In Mr. Turcotte’s view, “Parliament should first determine its needs and then assess the technical safeguards, the potential security risks, and the privacy policies of each service before selecting a particular platform.”<sup>128</sup> Similarly, the Committee was reminded that “there’s always a trade-off between convenience and security. The more security you want, the more it is going to be inconvenient for people to engage at that level.”<sup>129</sup> Ms. Bernier told the Committee that it needed to determine the level of security required, in collaboration with government experts in telecommunications cybersecurity and based on the confidentiality of the discussions.<sup>130</sup>

The House of Commons is currently using the video-conferencing platform Zoom for public virtual proceedings. Stéphan Aubé, Chief Information Officer, Digital Services and Real Property, told the Committee that the House considered a number of platforms, such as Skype for Business, Microsoft Teams and Cisco Webex.<sup>131</sup> Zoom was selected because it met all of the House Administration’s requirements for public proceedings. These requirements included built-in simultaneous interpretation and broadcasting capabilities. Also, Zoom is supported on all of the devices used by the House of Commons and is considered user-friendly.

Mr. Aubé also noted that Zoom was selected for public virtual meetings because the platform contained certain important security features. For example, “virtual waiting rooms” require all participants in a meeting to be vetted according to their credentials

---

126 Turcotte, 1750 and 1830.

127 Turcotte, 1830.

128 Turcotte, 1750.

129 Leuprecht, 1810.

130 Bernier, 1810.

131 Aubé, 1610.



prior to accessing virtual meetings.<sup>132</sup> As well, the House can authenticate the participants using House of Commons servers.<sup>133</sup>

For in camera meetings, the House administration has approved the Skype for Business software.<sup>134</sup> This decision by the House to employ a different platform for in camera meetings echoes the testimony the Committee heard from Mr. Deibert, who stated that he would not recommend using Zoom for sensitive communications or in camera proceedings, until further security improvements are made to the platform.<sup>135</sup>

Mr. Aubé noted that it was important to consider the sensitivity and/or confidentiality of information that will be discussed prior to a meeting. He suggested that if there was a risk that a meeting, or a portion of a meeting, would require in camera proceedings, that Skype be used.<sup>136</sup>

The Committee therefore recommends:

**That the digital platform that the House of Commons selects meets all requirements for usability, functionality, and security; and that the House work with the Canadian Centre of Cybersecurity in order to meet security requirements.**

**That an Internet connection protocol and specific technical guidelines regarding the computer equipment to be used be issued by the technical support service and the Board of Internal Economy to ensure quality and an acceptable level of security during virtual sittings held as part of parliamentary business.**

**That the Clerk of the House of Commons ensure that all committees and party caucus meetings have access to a private, secure platform for in-camera meetings during the current and future emergency situations where meetings are not possible in-person.**

---

132 Aubé, 1625.

133 Ibid.

134 Rota, 1635.

135 Deibert, 2010.

136 Aubé, 1640.



## ii. Legal and procedural matters

### (a) Quorum

The Committee is keenly aware that no parliamentary business at a sitting of the House of Commons will be considered legally valid if it is conducted without a quorum of 20 members, as specified in the *Constitution Act, 1867*.

The Committee heard from numerous legal and constitutional experts, including Mr. Dufresne, Mr. Pelletier, Mr. Tardi, Ms. de Clercy and Mr. Maingot that, as part of the established rights that the House possesses to carry out its work freely and independently of outside interference, the House alone has the right to set and amend its internal rules with respect to its debates and parliamentary proceedings.

According to this legal reasoning, as stated by Mr. Dufresne, the House and the courts have separate but complimentary roles with respect to the existence, scope and exercise of parliamentary privilege. The courts' role, in determining the existence and scope of a parliamentary privilege, is to ensure the constitutional mandatory requirement of 20 members being present to constitute the House is respected.

However, the House, in exercising an established privilege, holds exclusive jurisdiction over the procedural aspect of the nature of the presence of the member to be counted towards quorum. To that end, Mr. Dufresne suggested that the House adopt standing orders or sessional orders that would expressly state that, in the conduct and control of its procedure and proceedings, the presence of a virtual member (i.e. a member attending a sitting of the House remotely by videoconference) be counted towards quorum.<sup>137</sup> The Committee also notes the legal advice provided by Mr. Dufresne about judicial interpretation of the Constitution (found in this report in section B. iii. Quorum in the House), along with Mr. Tardi's view that quorum ought to be viewed as participatory or a virtual meeting of minds.

Mr. O'Brien told the Committee that, in his view, members needed to be physically in their place in the Chamber to be counted for quorum. As such, Mr. O'Brien submitted that the current quorum requirement would not allow for the recognition of members who attend virtual sittings as counting for the purpose of quorum.<sup>138</sup>

Nonetheless, a possibility remains that a court could disagree with the above legal interpretation of quorum and that the most serious implication of a court finding that a

---

137 Dufresene, 1250.

138 O'Brien, 1310.



proceeding of the House did not have the mandated quorum, using virtual presence, was that the impugned proceeding could be invalidated.<sup>139</sup>

Should the House decide to hold virtual sittings, Mr. Dufresne suggested three non-mutually exclusive options for the Committee to consider as recommendations to ensure all members who attend the proceedings virtually are counted as present for quorum. These are:

- that the House adopt an order that amends its Standing Orders, temporarily through a sessional or special order or permanently, which makes clear that the House is exercising its right over the conduct of its proceedings to recognize members who attend a sitting virtually as counting as present for the purposes of quorum;
- have at least 20 members physically present in the House during the sitting; or
- amend section 48 of the *Constitution Act, 1867*, to state that, for greater certainty, virtual presence of members of the House is considered presence for the purpose of section 48.<sup>140</sup>

The Committee therefore recommends:

**That consistent with the advice given by Law Clerk of the House of Commons to the Committee, during exceptional circumstances, virtual presence of members meets the requirements for quorum as set out in Section 48 of the *Constitution Act of 1867*.**

### **(b) Hybrid model for sittings of the House**

In the course of its study, the Committee heard that different options should be considered to ensure the continuity of Chamber sittings. Notably, some witnesses expressed the view that the House should consider adopting a hybrid model, whereby some members would appear in-person in Ottawa while others participated virtually. The Committee notes that a hybrid model has been adopted by the U.K. House of Commons as a response to the pandemic.

Mr. Bosc suggested that a hybrid model would obviate any concerns related to section 16 of the *Constitution Act, 1867*, namely Ottawa as the seat of government, and also

---

139     Ibid.

140     Dufresne, 1245 and 1250.

section 48, quorum.<sup>141</sup> He added that having a physical gathering of members in the familiar setting of Ottawa was extremely important for citizens, since it is visually impressive and adds gravitas to the proceedings.<sup>142</sup>

According to the Hon. Gordon Barnhart, former Clerk of the Senate, adopting a hybrid model would not result in the Constitution or Standing Orders being violated. He told the Committee that by adopting a combination of in-person and virtual sittings, the quorum requirement would be met by allowing 20 members to be physically present in the House, while adopting physical distancing measures, and that “members attending electronically would be in addition to that quorum.”<sup>143</sup>

The Speaker of the House expressed the view that, under a hybrid model, the decision for members about whether to physically present themselves in the Chamber or attend virtually, belonged to members.<sup>144</sup> He also stated that proceedings held under a hybrid model would require minimal changes to the Standing Orders. He informed the Committee that the House administration was undertaking testing with simulations of a hybrid model “and will soon be ready to go beyond what has already been achieved with the virtual meetings of the [S]pecial [C]ommittee [on COVID-19].”<sup>145</sup>

However, Mr. O’Brien raised concerns about virtual sittings and how these could affect the rule of attendance, a permanent rule of the House since 1867. According to Mr. O’Brien, “the principle of the physical attendance of members is required for the House to fulfill its constitutional duties [and] has been a constant theme as to how the legislature should operate.” To that end, he suggested that the wording of the marginal note of Standing Order 15, which requires attendance of every member, could be amended to allow for the use of virtual platforms.<sup>146</sup>

The Committee therefore recommends:

**That given the virtual sittings of the Special Committee on the COVID-19 Pandemic have been successful and 300 plus members have been able to take part simultaneously, and that given the success of current virtual proceedings, the Committee recommends that**

---

141 Bosc, 1235.

142 Bosc, 1335.

143 Barnhart, 1255; 1325.

144 Rota, 4 May 2020, 1550.

145 Rota, 4 May 2020, 1535.

146 O’Brien, 1305; 1310.



**the House of Commons move to additional virtual proceedings, during the current pandemic, for all regular business of the House.**

### **(c) Alternate locations**

In terms of the procedures and practices of the House, COVID-19 has two principle impacts: federal and provincial health authorities have issued directives about individuals refraining from gathering in large numbers and that all persons should keep at least two metres apart at all times. These directives have the similar goal of seeking to mitigate against, if not prevent, person-to-person spread of the virus.

Overall, the Committee heard very little testimony about the potential use of alternate locations for sittings of the House. Mr. Patrice was asked by a member of the Committee about the House potentially sitting in venues that would provide for abundant physical distancing in their seating arrangement and that have on-site audio-visual equipment, such as the Shaw Centre and the Canadian Tire Centre.<sup>147</sup> In response, Mr. Patrice indicated that the idea was “quite interesting” and could be pursued if that was the will of the House.

The Committee also recalls that it heard testimony from Dr. Raymond that a very careful risk assessment should be undertaken before proposing that members and all staff switch physical workplaces, including a consideration of risks borne by additional staff onsite and families back home, and the risks related to travel.<sup>148</sup>

The Committee also heard from a member of the Committee that certain provincial legislatures were studying alternative venues or using gallery seating for members. These legislatures included New Brunswick, Prince Edward Island, Manitoba and British Columbia.

The Committee therefore recommends:

**That in-person sittings of the House and committees not be held in locations other than on Parliament Hill in Ottawa, unless those locations have been inspected and approved by the Public Health Agency to protect the health and safety of all members and their staff, administration employees, security staff and interpreters.**

---

147 Patrice, Meeting 11, 1125.

148 Raymond, 1145.

#### **(d) Order and decorum**

The maintenance of order and decorum during proceedings of the House belongs foremostly to members adhering to the rules and practices that they themselves established. In the event that a departure occurs from established standards for order and decorum, the Speaker is empowered to exercise a range of disciplinary measures to ensure that the recognized norms are observed.

The Speaker of the House told the Committee that during virtual sittings, certain long-standing practices meant to uphold the dignity of the House ought to continue to be observed. These included:

- addressing remarks through the Chair;
- insisting the proceedings be conducted in a respectful manner; and
- maintaining the rule that members wishing to speak wear business attire.<sup>149</sup>

Further, in a letter sent to the Committee's chair, the Speaker stated his view that during virtual sittings, it remained necessary to maintain the authority and dignity of Parliament and its proceedings as much as possible. As an example, Mr. Rota cited the long-established rules for decorum that prohibit the use of displays, props and exhibits. He indicated that he would be grateful if the Committee could recommend guidelines to the House with respect to ensuring the decorum of proceedings that are held by videoconference.

The Speaker also noted, in his first appearance before the Committee, that some rules of decorum were not practical for members participating remotely to observe, such as rising in their place to be recognized to speak.

Mr. Rota further stated that the usual disciplinary measures need to be made available to the Speaker during virtual sittings, including cutting off a member from speaking.

The Hon. Peter Milliken, former Speaker of the House of Commons, echoed this sentiment by raising a concern about the difficulties that a presiding officer might

---

149 Rota, Meeting 10, 1120.



encounter, during a virtual sitting of hundreds of members, in trying to manage instances of grave disorder among a large number of members.<sup>150</sup>

The Committee also heard Ms. de Clercy express her concerns that an important challenge “in the move to virtual assembly is to ensure that e-deliberation is more than just an episodic, half-hearted online opinion poll.”<sup>151</sup>

The Committee therefore recommends:

**That the authority and dignity of Parliament including all matters relating to decorum in the House be maintained.**

**That the participation of members in virtual proceedings respect the following guidelines:**

- **addressing remarks through the Chair;**
- **insisting the proceedings be conducted in a respectful manner;**
- **maintaining the rule that members wishing to speak wear business attire;**
- **prohibiting the use of displays, props and exhibits;**
- **using a uniform sign symbolizing Parliament to be set up behind each participating member in order to preserve the decorum and seriousness of parliamentary business, to avoid any form of partisanship and to ensure the safety and privacy of members;**
- **adequate lighting so that the member’s features can be recognized;**
- **camera should be in a fixed position; and**
- **video must be turned on for the member to be recognized by the Speaker. More generally, technical staff recommend that video be kept on while members attend a virtual sitting; however, members can**

---

150 House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, Meeting 11, 23 April 2020, 1250 (Hon. Peter Milliken, former Speaker of the House of Commons).

151 de Clercy, 1850.

**exercise their discretion about turning the video on or off when they do not have the floor.**

### (e) Voting

In normal circumstances, voting is a core duty performed by members in carrying out their parliamentary work. As a deliberative body, voting by members is the mechanism by which the House of Commons makes decisions.

During its study, the Committee heard a variety of viewpoints about mechanisms for voting in virtual sittings. In his first appearance, the Speaker of the House told the Committee that “electronic voting is something that I do not see happening in the near future.”<sup>152</sup> He explained that a secured system would need to be developed by the House that guarantees the right to vote securely for all members. However, when the Speaker appeared before the Committee a second time, he told members that should the Committee decide to make recommendations on how the House could exercise its decision-making function during the period where it stands adjourned for the pandemic, House administration would develop specific options for consideration. Mr. Rota stated that these options would be in line with the incremental approach that he strongly recommends be followed, as the House adapts its procedures and practices to the pandemic.<sup>153</sup>

Emmett Macfarlane, University of Waterloo, expressed his view that distance voting likely requires amendments to sections 48 and 49 of the *Constitution Act, 1867*. This was because, in his view, section 48 referred to the presence of members for quorum and section 49 implied a member’s physical presence in the House for voting purposes. However, Mr. Macfarlane stated that Parliament possessed the unilateral power to amend these sections using the amending formula in section 44 of the *Constitution Act, 1982*. He lastly noted that any amendments made to the Constitution or statutes to facilitate virtual processes should be framed explicitly as emergency measures.<sup>154</sup>

Conversely, Mr. Pelletier told the Committee that in his view, the *Constitution Act, 1867*, did not require member’s to be physically present to vote and that votes in the House could be held virtually.<sup>155</sup>

---

152 Rota, Meeting 10, 1210.

153 Rota, Meeting 14, 1535.

154 Macfarlane, 1240.

155 Pelletier, 1330.



Mr. Barnhart stated that introducing a system of electronic voting in the House may present challenges, and that any electronic system would have to ensure that each vote is valid. He nonetheless stated that electronic voting would be “well within the rules” if the system was designed to show how many people have voted and how they have voted.<sup>156</sup>

Aside from constitutional and technical concerns over electronic voting, Mr. O’Brien was of the view that allowing electronic voting may not respect principles of parliamentary procedure that are rooted in meaningful tradition.<sup>157</sup>

Mr. Bosc advised the Committee it could explore building on the existing practice of applying votes by the whip.<sup>158</sup> Under this practice, through unanimous consent, the results of one vote are applied to others.

The Committee therefore recommends:

**That the House of Commons set up a secure electronic voting system for conducting votes in virtual sittings as soon as possible in order to guarantee the right of members to vote safely in the event of a pandemic or any other exceptional circumstances threatening their safety and/or that of their families and communities.**

#### **(f) Question Period**

Seeking information from the government and holding it to account for its decisions and policy direction are fundamental principles of parliamentary government. An important exercise of this function occurs when members ask questions in the House during Oral Questions (better known as Question Period).

Having gained the experience of presiding over a virtual period of questions to cabinet ministers, the Speaker told the Committee that virtual exchanges between members could be structured differently than in-person exchanges. For example, Mr. Rota noted that the length of time provided for questions and answers could be extended from 35 seconds to a longer period of time, to “allow for more in-depth questions to be asked and more in-depth answers to be given.”<sup>159</sup> Further, he indicated that while speaking

---

156 Barnhart, 1255.

157 O’Brien, 1310.

158 Bosc, 1240.

159 Rota, Meeting 14, 1645.



lists provided by parties gave certainty about which member would ask a question, uncertainty existed about which member would answer the question.<sup>160</sup>

According to the Speaker, an agreement to allow lengthier exchanges for questions and answers in a virtual sitting would not require formally changing the Standing Orders of the House.<sup>161</sup>

The Committee makes no recommendations on this matter at this time.

## **B. Future work for the Committee on developing procedures and practices to be used by the House during similar emergencies**

Several witnesses told the Committee that, once the House resumes sitting, the Committee should consider commencing a study, under Standing Order 108(3)(a)(iii), on developing a set of procedures and practices that could be used by the House during a similar emergency.

The Speaker of the House encouraged the Committee to study different options that “would keep Parliament running if something like this should happen again, or something worse.”<sup>162</sup> Mr. Rota suggested elements of the study could include developing a set of modified procedures, putting in place a “trigger” for when such procedures would be used, and to prepare for different scenarios. Mr. Robert echoed this suggestion, stating that the Committee could consider developing procedural options that the House could employ should it be confronted in the future with similar circumstances, without having to go through the process it is going through now.<sup>163</sup>

Mr. Barnhart underscored that similar pandemics may recur in the future and that developing two sets of Standing Orders would be worth considering. He stated that Parliament needed to be “adaptable to the circumstances” to ensure continued parliamentary activity.<sup>164</sup> Similarly, Mr. Macfarlane told the Committee that, in his view,

---

160 Rota, Meeting 14, 1530.

161 Ibid.

162 Rota, Meeting 10, 1220.

163 Robert, Meeting 10, 1305.

164 Barnhart, 1340.



“formalizing provisions to enable virtual activities, including voting, is important not only for the next months but as future contingency.”<sup>165</sup>

Mr. O’Brien told the Committee that a template for a set of modified Standing Orders should be developed.<sup>166</sup> However, he cautioned against proposing revisions to the Standing Orders without understanding how these changes may impact the House’s essential characteristics. He also suggested that the House administration in collaboration with the Committee undertake a comprehensive audit of the Standing Orders to better assess the implications that new technologies, including virtual platforms, would have on the various procedures of the House, and that the results of the audit would provide the first steps in the implementation of a virtual sitting platform.<sup>167</sup>

Ms. de Clercy told the Committee that the pandemic should not serve as an accidental gateway to a permanent method of virtual assembly that is not well understood and carries large democratic implications for Canada.<sup>168</sup>

Mr. Bosc noted that the deadline under which the Committee was working was, in his view, too brief to explore the complex issue of virtual sittings. He suggested that the Committee consider “presenting an initial report and then continue its consideration of this subject matter beyond the terms of its order of reference.”<sup>169</sup>

The Committee therefore recommends:

**That the Committee undertake a follow-up study on lessons learned from implementing a virtual Parliament to consider improvements and modernizations that can be implemented, including Question Period and voting.**

**That the Committee continue its study to allow for further evidence to be taken and to permit a fuller and more thoughtful analysis of the issues, in order to be ready to respond quickly to a new crisis.**

---

165 Macfarlane, 1240.

166 O’Brien, 1340.

167 O’Brien, 1305; 1330.

168 de Clercy, 1855.

169 Bosc, 1240.

**That the House of Commons conduct a review of gender and regional representation regarding decisions made in the House of Commons during the COVID-19 pandemic.**



## APPENDIX A LIST OF WITNESSES

---

The following table lists the witnesses who appeared before the Committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the Committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
<b>House of Commons</b>	2020/04/21	10
Hon. Anthony Rota, M.P., Speaker of the House of Commons		
Philippe Dufresne, Law Clerk and Parliamentary Counsel		
Charles Robert, Clerk of the House of Commons		
<b>As individuals</b>	2020/04/23	11
Marc Bosc, Former Acting Clerk of the House of Commons		
Emmett Macfarlane, Associate Professor University of Waterloo		
Hon. Peter Milliken, Former Speaker of the House of Commons		
Benoît Pelletier, Professor Faculty of Law, University of Ottawa		
<b>House of Commons</b>	2020/04/23	11
Mélanie Leclair, Director, Employee Relations		
Pierre Parent, Chief Human Resources Officer		
Michel Patrice, Deputy Clerk, Administration		
<b>Institute of Parliamentary and Political Law</b>	2020/04/23	11
Gregory Tardi, Executive Director		
<b>Public Health Agency of Canada</b>	2020/04/23	11
Dr. Barbara Raymond, Executive Medical Advisor Vice-President’s Office, Infectious Disease Prevention and Control Branch		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>As individuals</b>	2020/04/29	12
Niki Ashton, M.P., Churchill—Keewatinook Aski		
Mumilaaq Qaqqaq, M.P., Nunavut		
Chantal Bernier, National Practice Leader Privacy and Cybersecurity, Dentons Canada		
Cristine de Clercy, Associate Professor Department of Political Science, The University of Western Ontario		
Ronald J. Deibert, Professor of Political Science, and Director Citizen Lab, Munk School of Global Affairs and Public Policy, University of Toronto		
Christian Leuprecht, Professor Department of Political Science, Royal Military College of Canada		
<b>Department of Public Works and Government Services</b>	2020/04/29	12
Matthew Ball, Director, Interpretation and Chief Interpreter Translation Bureau		
Nathalie Laliberté, Vice-President Services to Parliament and Interpretation, Translation Bureau		
<b>Microsoft Canada Inc.</b>	2020/04/29	12
John Weigelt, National Technology Officer		
<b>Office of the Privacy Commissioner of Canada</b>	2020/04/29	12
Martyn Turcotte, Director Technology Analysis Directorate		
<b>Zoom Video Communications, Inc.</b>	2020/04/29	12
Harry D. Moseley, Global Chief Information Officer		
<b>As individuals</b>	2020/04/30	13
Hon. Gordon Barnhart, Former Clerk of the Senate		
Joseph P. Maingot, Former Law Clerk and Parliamentary Counsel, House of Commons, and Author of “Parliamentary Privilege in Canada”		
Gary W. O'Brien, Former Clerk of the Senate		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>House of Commons of the United Kingdom of Great Britain and Northern Ireland</b> Matthew Hamlyn, Strategic Director Chamber Business Team, Chamber and Committees	2020/04/30	13
<b>National Assembly for Wales</b> Siwan Davies, Director of Assembly Business	2020/04/30	13
<b>Privy Council Office</b> Ian McCowan, Deputy Secretary to the Cabinet Governance Secretariat	2020/04/30	13
<b>Scottish Parliament</b> David McGill, Clerk and Chief Executive Bill Ward, Head of Broadcasting	2020/04/30	13
<b>Canadian Association of Professional Employees</b> Nicolas Bois, President Local 900 Greg Phillips, President Katia Theriault, Director of Communications Bastien Tremblay-Cousineau, Parliamentary Interpreter and Occupational Health and Safety Representative	2020/05/04	14
<b>House of Commons</b> Hon. Anthony Rota, M.P., Speaker of the House of Commons Stéphan Aubé, Chief Information Officer Digital Services and Real Property Philippe Dufresne, Law Clerk and Parliamentary Counsel Eric Janse, Clerk Assistant, Committees and Legislative Services Directorate Michel Patrice, Deputy Clerk, Administration Charles Robert, Clerk of the House of Commons	2020/05/04	14
<b>International Association of Conference Interpreters</b> Nicole Gagnon, Advocacy Lead Jim Thompson, Communications Counsel	2020/05/04	14





## APPENDIX B LIST OF BRIEFS

---

The following is an alphabetical list of organizations and individuals who submitted briefs to the Committee related to this report. For more information, please consult the Committee's [webpage for this study](#).

**Cisco**

**Deveaux International Governance Consultants Inc.**

**Essex, Aleksander**

**Equal Voice**

**Garrett, Pascale**

**Goodman, Nicole**

**International Association of Conference Interpreters**

**Leuprecht, Christian**

**Macfarlane, Emmett**

**Markup LLC**

**Moussa, Mohammed**

**Neuvote**

**Rota, Hon. Anthony (Speaker of the House of Commons)**

**Samara Centre for Democracy**

**Tardi, Gregory**

**Thomas, Paul G.**

**Zoom Video Communications, Inc.**



## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 9 to 17](#)) is tabled.

Respectfully submitted,

Ruby Sahota  
Chair



## THE CONSERVATIVE CASE FOR PARLIAMENTARY DEMOCRACY

The House of Commons is not some technology problem awaiting a solution. Parliament is also “more than just procedure—it is the custodian of the nation’s freedom”, to quote John Diefenbaker,<sup>1</sup> whose words are now inscribed in our passports.

Our Parliament traces its lineage back some eight centuries. While democracy has unquestionably evolved, one of the few constants amidst this change was that the House met in person. Abandoning this is not a simple matter. The recent calls for the House to “just get on Zoom already” brought to mind the words of Winston Churchill:

It is difficult to explain this to those who do not know our ways. They cannot easily be made to understand why we consider that the intensity, passion, intimacy, informality and spontaneity of our Debates constitute the personality of the House of Commons and endow it at once with its focus and its strength.<sup>2</sup>

### ***Parliament must meet—its role and place are fundamental***

In a democratic country, the elected legislature is the beating heart of its system of government. It is where the viewpoints from all corners of the country get expressed. It is also where the executive government accounts for its choices, priorities, and actions.

Christian Leuprecht, a political scientist, spoke about this role during a crisis:

Ultimately the underlying primary constitutional principle here is the principle of responsible government. It is about ministerial responsibility, first and foremost, during a crisis and an emergency.... Especially during a time of crisis, Parliament has a supreme duty to hold the executive to account. Canadians need continuous parliamentary audit of the executive and the bureaucracy’s judgment.<sup>3</sup>

Marc Bosc, former Acting Clerk of the House, articulated Parliament’s place at this time:

In too many countries around the world, dominant executive branches of government eclipse Parliament. This makes parliaments weaker and less relevant. That imbalance needs to be addressed, especially in a time of crisis. The House of Commons needs to be functioning and to be seen to be functioning. I want to be clear: Parliament, particularly the House of Commons, is an essential service to the country. Members of Parliament are also essential workers....<sup>4</sup>

Greg Tardi, a former lawyer for the House, cautioned us, “if there is no Parliament, if there is no give-and-take, if there is no communication between the governors and the people, essentially, in my view, democracy breaks down.”<sup>5</sup>

**The Official Opposition firmly acknowledges the central place of Parliament within Canadian democracy and resolutely calls for its role to be restored fully.**

---

<sup>1</sup> House of Commons, *Debates*, September 22, 1949, p. 146

<sup>2</sup> United Kingdom House of Commons, *Official Report*, October 24, 1950, column 2707

<sup>3</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 29, 2020, pp. 6-7

<sup>4</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 13

<sup>5</sup> *Ibid.*, p. 25

## ***Parliament has been getting results for Canadians—and it should keep it up***

Tough times require tough, but necessary questions. While MPs are unanimously committed to getting Canadians through this pandemic in the safest, healthiest and most economically viable way possible, that does not mean we all agree on every detail.

The sense of a common mission among parliamentarians does not, though, forbid scrutiny. Paul Thomas, a political scientist, pointed out in a *Winnipeg Free Press* op-ed:

all MLAs are expected to provide scrutiny but in practice the task is performed mainly by the Official Opposition. During a crisis, this task becomes more difficult because the Opposition can be accused of obstruction when it is merely trying to perform an essential function.<sup>6</sup>

But these views are not just academic concerns. Veteran observers of Canadian politics have also made similar points. John Ibbitson, for example, wrote,

Everything that is being debated on Twitter and Facebook and in the news media needs to be debated on the floor of the House and in Question Period. Canada is a parliamentary democracy, health emergency or no health emergency.... The opposition parties have every right to raise these issues, and the governing party has every right to defend its record. The place to do that is in Parliament, not just once a day in front of a microphone.<sup>7</sup>

His Quebec counterpart, Manon Cornellier, wrote in *Le Devoir* that

The Conservatives ... are right to require the government to be more accountable. Constant speeches and press conferences cannot replace the duty of ministers and the Prime Minister to be accountable before elected representatives. In a British type of Parliament, the existence of the government depends on the trust of the House. Ultimately, the government must answer for its actions and decisions to the House.<sup>8</sup>

Sometimes the simple act of asking questions—and of knowing that questions must be answered—requires a government to “up its game”. Asking questions and giving voice to concerns can generate constructive solutions to policy shortcomings.

On COVID-19, opposition efforts led to, for example, enhanced wage subsidies, student supports, reduced penalties for part-time workers, preventing new parents from losing benefits, authorizing credit unions to deliver loans, and connecting employers with potential employees. These are undoubtedly improvements for Canadians, and they all came from opposition MPs questioning the government’s programme design choices.

## ***If other legislatures are resuscitating parliamentary life, so can ours***

The United Kingdom House of Commons resumed sitting April 21, 2020, and the Speaker was empowered to regulate the number of persons in the Chamber, currently limited at about 50 MPs, while facilitating virtual participation in “hybrid” proceedings.<sup>9</sup> On May 12, the House extended these provisions until its Whitsun recess on May 20, but it is expected to resume full physical sittings upon its

---

<sup>6</sup> *Winnipeg Free Press*, “Manitoba’s legislature an essential institution”, April 25, 2020, p. 9

<sup>7</sup> *The Globe and Mail*, “Bring back the House: We need the return of Parliament now more than ever”, April 17, 2020 (online)

<sup>8</sup> *Le Devoir*, “Théâtre parlementaire”, April 18, 2020, pp. B6-B7 [translation]

<sup>9</sup> United Kingdom House of Commons, *Votes and Proceedings*, April 21, 2020, p. 2; April 22, 2020, p. 3; Standing Committee on Procedure and House Affairs, *Evidence*, April 30, 2020, p. 9

return June 2.<sup>10</sup> In Edinburgh, the Scottish Parliament, in addition to virtual questioning sessions, held sittings where almost half the chairs in the chamber were removed, with arrangements for voting by members who could not sit inside (but which turned out not to be necessary).<sup>11</sup>

The Australian Senate and House of Representatives have each sat periodically during the pandemic.<sup>12</sup> New Zealand's House of Representatives met during the pandemic, and resumed its usual schedule of three sittings per week on April 28, 2020.<sup>13</sup> While each House had reduced attendance for distancing, neither embraced virtual sittings.

Closer to home, most provincial legislatures have held special sittings during the pandemic and are now returning to the rhythms of regular life or making plans to do so.

The Legislative Assembly of Ontario sat on May 12, 2020, and will sit twice per week in subsequent weeks for the rest of the spring.<sup>14</sup> The National Assembly of Quebec sat on May 13, 2020, with regular sittings also set to resume the week of May 25, for the balance of the spring, with reduced attendance.<sup>15</sup>

The Legislative Assembly of New Brunswick is scheduled to resume sitting on May 26. Potential arrangements being discussed include limiting attendance, using a larger venue, seating MLAs in the galleries, and installing plexiglass between desks.<sup>16</sup>

The Legislative Assembly of Manitoba began once-weekly sittings on May 6 with physical distancing measures put into place.<sup>17</sup> The Legislative Assembly of British Columbia is expected to resume "regular sittings", with the next phase of that province's re-opening plan, anticipated in mid-May 2020.<sup>18</sup>

The Legislative Assembly of Prince Edward Island is expected to sit May 22, 2020, coinciding with the expected start of the next phase of that province's re-opening plan. Discussions are underway about possibilities like reduced attendance or seating MLAs in the galleries; relocation was ruled out as "an unlikely solution in the short term".<sup>19</sup>

The Legislative Assembly of Alberta held a two-week sitting prior to Easter, and has since resumed sitting on May 6, 2020, with an expectation that it will work to complete the spring legislative agenda. Physical distancing precautions are being taken.<sup>20</sup>

---

<sup>10</sup> United Kingdom House of Commons, *Votes and Proceedings*, May 12, 2020, pp. 2-3; *Official Report*, May 12, 2020, columns 213-214

<sup>11</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 30, 2020, p. 7

<sup>12</sup> *Cape Breton Post*, "Australia's parliament set to pass huge stimulus plan", April 7, 2020 (online); Twitter, Department of the Prime Minister and Cabinet (Australia) (@pmc\_gov\_au), May 11, 2020

<sup>13</sup> Radio New Zealand, "Special committee set-up as Parliament is adjourned", March 24, 2020 (online); "Parliament to resume: 'Zoom ain't gonna cut it'", April 21, 2020 (online); "Parliament post-lockdown: more money and bills but fewer debates and MPs", April 24, 2020 (online)

<sup>14</sup> Legislative Assembly of Ontario, *Votes and Proceedings*, May 12, 2020, pp. 1, 5

<sup>15</sup> Assemblée Nationale du Québec, "Reprise des travaux parlementaires", May 5, 2020 (online)

<sup>16</sup> CBC News, "As MLAs push for public debate, a return to the House presents a logistical quagmire", May 5, 2020 (online); *Times & Transcript*, "Peanut galleries, premiers go with gloves off", May 9, 2020, p. C9

<sup>17</sup> CBC News, "Manitoba Legislature to resume Wednesday with pared-down assembly due to COVID-19", May 1, 2020 (online)

<sup>18</sup> Office of the Premier (British Columbia), "Premier outlines plan to restart B.C. safely", May 6, 2020 (online)

<sup>19</sup> CBC News, "While preparing for emergency sitting, P.E.I. MLAs consider new ways to function under COVID-19", May 7, 2020 (online)

<sup>20</sup> CBC News, "Alberta MLAs bicker over legislature sittings during COVID-19 pandemic", April 11, 2020 (online); *Edmonton Sun*, "Back to business", May 6, 2020, p. A2

Following the successes of our House (discussed below) and others—and their plans to resume sitting, in line with re-opening plans—the **Official Opposition recommends that the House join these legislatures by resuming its sittings on May 25.**

### ***Sitting in the Chamber is important—and it can be done safely***

In the midst of the Second World War, Mr. Churchill, explained how instrumental the House is in providing vigour to a country's democratic life:

The vitality and the authority of the House of Commons and its hold upon an electorate, based upon universal suffrage, depends to no small extent upon its episodes and great moments, even upon its scenes and rows, which, as everyone will agree, are better conducted at close quarters. Destroy that hold which Parliament has upon the public mind and has preserved through all these changing, turbulent times and the living organism of the House of Commons would be greatly impaired. You may have a machine, but the House of Commons is much more than a machine....<sup>21</sup>

Veteran columnist Andrew Coyne fleshed out this concept for our present times:

It is not only necessary that these debates be open to the public. It is necessary also that they be dramatic – to focus people's attention, draw them in, implicate them in the outcome. And that, as any theatregoer knows, requires the actors to be physically present: to emphasize that power is in the balance, not just abstract questions of principle, and that these are flesh-and-blood human beings contending with one another, with all their strengths and all their failings.<sup>22</sup>

Not only is the nature of debating and discussing the nation's issues important, but so, too, is the physical venue in which it occurs. Mr. Bosc brought home to us this point:

an overarching principle ... is the importance of having that physical gathering of members in Ottawa. I think that it is extremely important for citizens to be able to see their institution at work in a particular setting they are familiar with. Visually it's impressive; it gives it the gravitas and importance it deserves. The trappings are important, I'm not going to lie.... There are elements of having that particular setting that give importance to the activity.<sup>23</sup>

Gary O'Brien, a former Clerk of the Senate, made an impassioned plea to the Committee to place the struggles we face in this pandemic within the context of history:

The values of Parliament are so much at stake. I know it's a terrible illness. The pandemic is so terrible—there's no question about that—but this is our Constitution. This is our primary constitutional institution and we should guard that as much as possible.... The long arm of history is what I'm concerned about. The House has always had obstacles. I'm a student of pre-Confederation history. The first meeting took place in 1792, in Upper Canada. Imagine the member from Ottawa who had to go all the way to [Niagara-on-the-Lake], which is where that was, and the hardships he had to endure to get to Parliament, but he did it because of the importance of the institution. I think we have to keep that in mind even in this pandemic.<sup>24</sup>

Experience shows that the House can meet responsibly in person while observing public health guidance. Since first adjourning for the pandemic, it has since sat five times. At each sitting, about three dozen MPs attended and Standing Order 17 (requiring Members to speak from assigned seats)

---

<sup>21</sup> United Kingdom House of Commons, *Official Report*, October 26, 1943, columns 404-405

<sup>22</sup> *The Globe and Mail*, "Yes, Parliament is theatre. That's the point.", April 22, 2020, p. A11

<sup>23</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 24

<sup>24</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 30, 2020, pp. 24-25



was suspended to allow distancing.<sup>25</sup> The Special Committee on the COVID-19 Pandemic has also met three times in the Chamber. Not one incident of COVID-19 has been associated with any of these.

The Honourable Anthony Rota, the Speaker of the House, assured us that “as far as the public health guidelines go, we have been doing our best to make sure that it does take place. ...in the House, sitting in the chair, I get to observe what’s going on and, overall, everyone is staying at least six feet apart.”<sup>26</sup> Similarly, the Committee heard from Nicole Gagnon, of the International Association of Conference Interpreters (Canada Region), that “no one is worried about potential COVID-19 infection.”<sup>27</sup>

The House Administration requires “about the same” staff onsite for a virtual sitting as an in-person one,<sup>28</sup> and “almost twice” the staff to support a virtual committee meeting than normal,<sup>29</sup> plus the Translation Bureau cycles interpreters, who work on Parliament Hill, at a 50% quicker pace for virtual meetings while also adding “co-ordinators”.<sup>30</sup> Meanwhile, Michel Patrice, the Deputy Clerk (Administration), assured us that “we’ve basically planned our work around the requirements in terms of increasing cleaning, and we’re able to support those requirements.”<sup>31</sup>

*The Globe and Mail* observed, in an editorial last month, about our situation that,

If it’s possible to safely physically distance in grocery stores, on transit and ... in garden centres, then 30 to 40 MPs representing a proportionally scaled-down version of the full House—as was done twice to pass emergency legislation—can safely gather in a chamber designed to hold 338 MPs. And given the necessity for Canadians to self-isolate for a while longer, if a small number of MPs have to spend the next few weeks in Ottawa, without flying home on weekends, so be it.<sup>32</sup>

We agree. **The Official Opposition recommends that the House use its Chamber for its sittings. We also urge the parties’ House leaders and whips to continue their successful approach to managing sittings by accommodating prevailing public health guidance, including the suspension of Standing Order 17.**

### ***Amid the pandemic, we need to accommodate all MPs’ participation***

Dr. O’Brien warned us that, in his assessment, “the ultimate goal of allowing Parliament to operate as far as virtually as possible without a continued physical presence in Ottawa appears to me to go beyond changing just the work ways of the House.”<sup>33</sup>

Several witnesses urged us to consider a hybrid model of House sittings, where a physical sitting would be held and attendance augmented by Members participating remotely by videoconference, as a preferable approach. Mr. Bosc, who had urged upon us the importance of the physical venue, described the hybrid model as having

---

<sup>25</sup> House of Commons, *Journals*, March 24, 2020, p. 328; April 11, 2020, p. 335; April 20, 2020, pp. 385, 395, 398

<sup>26</sup> Standing Committee on Procedure and House Affairs, *Evidence*, May 4, 2020, p. 13

<sup>27</sup> *Ibid.*, p. 7

<sup>28</sup> *Ibid.*, p. 14

<sup>29</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 21, 2020, p. 7

<sup>30</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 29, 2020, pp. 19, 24

<sup>31</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 11

<sup>32</sup> *The Globe and Mail*, “In a time of crisis, the Trudeau government should not be sidelining Parliament”, April 20, 2020 (online)

<sup>33</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 30, 2020, p. 20

the benefit of retaining for members and the House the flexibility and agility afforded by in-person sittings, while respecting public health guidelines by supplementing such sittings with virtual participation that has the added benefit of safely ensuring cross-country representation.<sup>34</sup>

The Honourable Gordon Barnhart, another former Clerk of the Senate, advised that

I think with appropriate physical distancing the House can meet with 20 or perhaps 30 people spread around. The risk isn't all that high and physical distancing should be practised, but to make sure, a greater number of people can participate, I would weigh in on the side of virtual attendance by the other members.<sup>35</sup>

Responding to a concern that hybrid proceedings treat MPs unequally and, therefore, breach privilege, Mr. Bosc assured us bluntly, "I don't share your concern at all".<sup>36</sup>

**The Official Opposition recommends that the hybrid model be used to enable MPs who, for reasons associated with COVID-19-related public health guidance, are not able to be present can still participate in the House's constitutional duty of holding the government to account. We strongly oppose, however, the use of any virtual proceedings to consider legislation, a budget or an Address in Reply.**

#### ***Virtual committees should continue and must have more than virtual powers***

Our committee system is the workhorse of parliamentary business. Several of our standing committees, but not even a third of them, have been empowered to meet virtually. At the start of the virtual experiment, committees were allowed to meet "for the sole purpose of receiving evidence";<sup>37</sup> committees were not even allowed to choose the witnesses who would appear. After negotiations, at the risk of the opposition being painted by the Liberals as opposing important aid for Canadian workers, committees now "may also consider motions requesting or scheduling specific witnesses".<sup>38</sup>

Committees still are not allowed to ask for documents, to pass resolutions declaring their opinions, or even to write reports simply summarizing what they have heard and giving their thoughts about it. (This report is a specifically carved-out exception.<sup>39</sup>)

Emmett Macfarlane, a political scientist, made the point to the Committee that "a key concern about Parliament's role ... is that all MPs be able to participate as fully and as practicably possible."<sup>40</sup> We agree. The Honourable Peter Milliken, a former Speaker of the House, suggested that the hybrid model would be well-suited for committees.<sup>41</sup>

**The Official Opposition recommends that all standing and special committees be empowered to hold virtual or hybrid meetings while the current public health guidance remains in place; and that virtual**

---

<sup>34</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 13

<sup>35</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 30, 2020, p. 23

<sup>36</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 20

<sup>37</sup> House of Commons, *Journals*, March 24, 2020, pp. 328-329

<sup>38</sup> House of Commons, *Journals*, April 11, 2020, pp. 335, 338

<sup>39</sup> House of Commons, *Journals*, April 11, 2020, pp. 335, 337

<sup>40</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 14

<sup>41</sup> *Ibid.*, p. 15

committees be authorized to exercise all of the powers normally available to them at meetings in Ottawa.

***These changes must be temporary and explicitly linked to the current pandemic***

Until a vaccine or a treatment is developed for COVID-19, we must be ready to live with this terrible disease for a time. While we must brace for epidemic waves, and variations in the prevailing health advice, we should not admit defeat and treat it as permanent.

Dr. Macfarlane urged our Committee to take an explicitly short-term perspective:

I think that any changes ... that aim to facilitate virtual processes should be framed explicitly as emergency measures. Provisions for virtual participation should be regarded as a temporary stopgap measure to ensure Parliament can continue to play its fundamental role to the best degree possible, but they cannot replace an in-person Parliament during normal times.<sup>42</sup>

Christine de Clercy, another political scientist, cautioned that “this period of crisis, in other words, should not serve as an accidental gateway to bringing in a permanent method of virtual assembly that is not well understood and that carries large democratic implications for Canada.”<sup>43</sup> Conservatives agree with these professors’ concerns.

**The Official Opposition recommends that these proposed arrangements expire on the first sitting day in September 2020, so that this Committee may review their implementation and make recommendations about renewal (and adjustments).**

***Alternatives to virtual sittings were virtually overlooked***

As we watch provinces easing restrictions, we must think ahead to the full course of the pandemic. The evolution of public health advice is likely to resemble a dimmer switch, not an on-off switch—and we must consider parliamentary arrangements similarly.

Conservatives asked, for example, about the possibility of sitting in a larger venue, to allow for greater physical distancing. Mr. Patrice answered, “I must admit that it’s quite interesting”, and Barbara Raymond, from the Public Health Agency of Canada, admitted, “it certainly sounds as though you would definitely be able to meet and surpass your physical distancing requirements.”<sup>44</sup> As noted earlier, some provincial legislatures are contemplating, or have contemplated, such an option already.

**The Official Opposition recommends that the Committee explore thoroughly and seriously non-virtual alternatives which could allow for MPs’ greater participation.**

***Continued study would allow for many concerns to be assessed better***

---

<sup>42</sup> *Idem*

<sup>43</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 29, 2020, p. 17

<sup>44</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 23, 2020, p. 5

A trial-run of hybrid House proceedings would allow the Committee to have more meetings to hear evidence about many important issues before any possible extension, if the health situation requires, of these arrangements. Some examples follow.

Technological resources: The Speaker urged us to follow a principle that “all members must be able to participate, recognizing that connectivity can vary in constituencies,” because MPs with Internet woes “have the same rights as everyone else and that has to be respected.”<sup>45</sup> Yet, we heard the House’s own resources are quite limited.<sup>46</sup> Additionally, high-speed Internet is not universally available across Canada; Canadian Radio-television and Telecommunications Commission data show that only 40% of rural households have access to Internet speeds like those available in urban communities.<sup>47</sup>

Security shortcomings: Conservatives were alarmed to read, on the day of the first virtual meeting of the Special Committee on the COVID-19 Pandemic, that the videoconference platform we were using, Zoom, was described as a “gold rush for cyber spies”.<sup>48</sup> Though some witnesses were satisfied with the arrangements for public meetings, other gaps and shortcomings remain unaddressed. House Administration officials confirmed that they cannot assure confidentiality of *in camera* committee or caucus meetings.<sup>49</sup> This could have many implications for parliamentary privilege.<sup>50</sup>

Safeguarding bilingualism: We were troubled to learn that interpreters’ injuries have increased exponentially since the implementation of virtual committee proceedings, with April 2020 injuries exceeding those in all of 2019.<sup>51</sup> Even their employer conceded that “the conditions are difficult for the interpreters.”<sup>52</sup> Between injuries, pandemic precautions, and the consequences of school closures, we are seeing our pool of available interpreters steadily shrinking, approaching a “worst-case scenario” that parliamentary activities could be jeopardized.<sup>53</sup> Not only is this distressing for our hard-working interpreters, but it places bilingualism in the House at grave risk.

Quorum: Philippe Dufresne, the Law Clerk, believes our constitutional quorum requirement could be satisfied with virtual attendance while suggesting doubts could be mitigated through the use of “hybrid” sittings or a constitutional amendment.<sup>54</sup> Meanwhile, Australia’s House of Representatives observes a very similarly worded constitutional requirement,<sup>55</sup> and its Clerk, Clarissa Surtees, said, “this

---

<sup>45</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 21, 2020, pp. 2, 5

<sup>46</sup> *Ibid.*, pp. 3, 7

<sup>47</sup> CBC News, “Northern MPs say virtual parliament is opportunity to tackle broadband challenges”, April 28, 2020 (online)

<sup>48</sup> CBC News, “House of Commons meeting virtually on a platform described as a ‘gold rush for cyber spies’”, April 28, 2020 (online)

<sup>49</sup> Standing Committee on Procedure and House Affairs, *Evidence*, May 4, 2020, pp. 22-23

<sup>50</sup> Breaches of parliamentary privilege can be found with disclosure of *in camera* committee proceedings, the use of bugging devices in, or electronic disclosure of, caucus proceedings, as well as the electronic surveillance of MPs outside of the parliamentary precinct: *House of Commons Procedure and Practice* (third ed.), pp. 34, 116, 1089-1090.

<sup>51</sup> Standing Committee on Procedure and House Affairs, *Evidence*, May 4, 2020, p. 2

<sup>52</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 29, 2020, p. 25

<sup>53</sup> Standing Committee on Procedure and House Affairs, *Evidence*, May 4, 2020, pp. 2, 5

<sup>54</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 21, 2020, p. 14

<sup>55</sup> Section 48 of the *Constitution Act, 1867* stipulates “The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers....” Meanwhile, section 39 of the *Commonwealth of Australia Constitution Act 1900* requires “the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.” (In 1989, the Parliament of Australia enacted a lower quorum while preserving the same formula of words: *House of Representatives (Quorum) Act 1989* (Cth.), s. 3.)

requirement has always been interpreted as meaning that ‘the presence’ means physical presence”.<sup>56</sup>

These are different jurisdictions, with different constitutions and jurisprudence, so both interpretations might be correct. While we respect the Law Clerk’s analysis and opinion, it is not just an academic question. As he pointed out, “it’s possible that a court could disagree... [and] what was adopted in the impugned proceeding could be invalidated.”<sup>57</sup> Leaving a cloud over any House decisions, especially on COVID-19 aid, is not ideal.

*Electronic voting:* While Liberal Committee members expressed enthusiastic curiosity about electronic voting, the Speaker’s cautious statement spoke volumes to us: “Voting is something that I don’t see happening in the near future. That’s something that requires some technology that personally I’m not yet comfortable with.”<sup>58</sup> Beyond technical readiness, Dr. de Clercy raised a serious substantive concern about electronic voting: “One of the challenges in the move to virtual assembly is to ensure that e-deliberation is more than just an episodic, half-hearted online opinion poll.”<sup>59</sup>

**The Official Opposition recommends that the Committee study be continued to allow these concerns and shortcomings, among others, to be assessed better.**

### ***Press conferences are not a substitute for Parliament***

In the past weeks, government scrutiny has largely been left to press conferences. The Prime Minister hosts a morning show at his doorstep, followed by an after-show, often hosted by the Deputy Prime Minister, for ministers mere feet from the House Chamber.

Unique circumstances may have made this a necessity in the pandemic’s first days, but we are long past that. This minority government, however, seems to find it more comfortable to face the Parliamentary Press Gallery than its parliamentary opposition. After all, most of the questions come from government-owned broadcasters and newspapers getting new government bailouts. We even learnt recently the Prime Minister’s staff help screen many of those who get to question their boss.<sup>60</sup>

This is not democracy. On the motion extending the U.K.’s hybrid trial, a former chair of our counterpart committee said, “we need to be in this place, eyeballing Government Ministers”.<sup>61</sup> We could not have said it better—but, we worry this is not the Liberal plan.

In last year’s election, the Liberal Party committed to “working with Parliament to introduce new technology or other institutional changes to better connect Members with their constituents”.<sup>62</sup> This has since been transposed into the Prime Minister’s mandate letter to the Government House Leader.<sup>63</sup> Recalling that electronic voting was proposed in the former Government House Leader’s heavily-

---

<sup>56</sup> Australian Broadcasting Corporation, “Why are politicians returning to Canberra amid a coronavirus crackdown?”, March 22, 2020 (online)

<sup>57</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 21, 2020, p. 15

<sup>58</sup> *Ibid.*, p. 10

<sup>59</sup> Standing Committee on Procedure and House Affairs, *Evidence*, April 29, 2020, p. 16

<sup>60</sup> Twitter, Glen McGregor (@glen\_mcgregor), May 8, 2020

<sup>61</sup> United Kingdom House of Commons, *Official Report*, May 12, 2020, column 223

<sup>62</sup> Liberal Party of Canada, *Forward: A Real Plan for the Middle Class*, p. 54

<sup>63</sup> Prime Minister, letter to the Leader of the Government in the House of Commons, December 13, 2019

disputed discussion paper,<sup>64</sup> and that remote participation was also discussed in the context of reform ideas, are these “virtual Parliament” efforts all part of a longer game plan?

As we saw from the Government’s efforts to seize parliamentary control over spending and taxation through Bill C-13, some Liberals have been keen students of Rahm Emanuel’s cynical maxim to “never allow a crisis to go to waste”.

**The Official Opposition will strongly resist any effort to exploit the pandemic as a cover to implement a permanent virtual Parliament, with its reduced ability to hold a government accountable, gravely undermining our democracy.**

---

<sup>64</sup> Government House Leader, “Modernization of the Standing Orders of the House of Commons”, March 2017

# DISSENTING OPINION OF THE NEW DEMOCRATIC PARTY OF CANADA

## Introduction

While the NDP agrees with some of the recommendations included in this report, there are certain recommendations with which there are unresolved issues that require significantly more analysis on the committee's part before any recommendations should be made. Decisions made without the appropriate analysis leave significant gaps in a study that speaks to the fundamental modification of how the House of Commons runs itself during the COVID-19 pandemic and any potential issue that may limit the ability of Members of Parliament to safely be physically present in the House of Commons.

First and foremost, on the topic of this study in general, nowhere near enough time was taken to properly assess the current pandemic and parliament's potential operations. Many of the witnesses who appeared before the committee agreed with this assessment:

*With regard to how we do things in Ottawa, I would like to suggest that changing the way we do things and changing the Standing Orders deserves more extensive study, and I would recommend to the committee that perhaps this is something they should continue to do.<sup>1</sup>*

*I hesitate to put a time frame on it, but I do know that May 15 is not enough time—that is for sure. You just don't have enough time to properly absorb the information and arrive at conclusions that really cover all the aspects that have been raised and need consideration, in my view.*

*I agree entirely with Marc Bosc's interpretation of this.*

*In order to answer your question properly, I think the first step should be to distinguish what the most pressing and urgent aspects of this ensemble of questions are, get those resolved first and then add in details as solutions present themselves.<sup>2</sup>*

*When we look at the situation that exists now, you were given a very short time as a committee to come up with what is, I'm going to say, a macro-level solution. Now, once that report comes in, there's implementation, and we will need more in-depth answers to that macro solution. I would hope that the committee would continue to look at what we have, how we can implement it and how it will make not only virtual meetings but also actual in-house meetings better.<sup>3</sup>*

Because of the extremely short time frame given for this report, a number of significant issues arose with the committee's work. The committee met well beyond what would be considered the end of their final meeting to deliberate on the recommendations. Committee members had very little time to review proposed recommendations from other parties. The final product was rushed to the point that committee members were working with older drafts while discussing newer ones because they could not be translated in such a short time. And finally, it impacted the writing of this dissenting report,

---

<sup>1</sup> House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1st Session, 43rd Parliament, Meeting 10, 21 April 2020, 1220 (Hon. Anthony Rota, Speaker of the House of Commons).

<sup>2</sup> House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1st Session, 43rd Parliament, Meeting 11, 23 April 2020, 1335 (Marc Bosc, Gregory Tardi).

<sup>3</sup> House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1st Session, 43rd Parliament, Meeting 14, 4 May 2020, 1600 (Hon. Anthony Rota, Speaker of the House of Commons).

which had to be written without a current copy of the final report. This resulted in not having the ability to note page and recommendation numbers throughout.

Certain recommendations referring to particular parliamentary privileges and functions, while well-intentioned, were made before enough research was done on the topics to be able to make the conclusive recommendations as they appear in this report.

## Quorum

While the committee agreed to modify the Standing Orders in the context of the current pandemic in an early recommendation in the main report, the committee also decided to recommend that the definition of quorum be amended to accept virtual presence as counting towards quorum. The latter recommendation is something the NDP believes should have been part of the broader discussion on revised standing orders.

The House of Commons Standing Order on Quorum is one that reflects the “normal” sitting of the House of Commons. The lack of analysis and witness testimony on this denied the committee the ability to review virtual factors, nor did it allow the committee to review elements of Quorum in the context of a hybrid parliament. The recommendation in the section referring to Quorum is something the NDP disagrees with. The NDP has major concerns about tasking the House with modifying the Standing Orders for a structure during a pandemic and simultaneously advising the House, without appropriate study, how to modify or consider a single Standing Order.

## Successes

Success of virtual proceedings up until the tabling of this report should be noted as being mixed. Not all members have been able to connect or their connection has not been strong enough for a constant video stream and there have been interruptions to proceedings because of interpretation issues.

To recommend that the House of Commons move to additional virtual proceedings for *all* regular business goes against the incremental approach referred to in other sections of the report and the recommendation the committee supported, as was suggested by several witnesses:

*Yes, I would agree with a staggered approach. I gather that the U.K. House of Commons at Westminster is starting slowly and seeing how it works, perhaps starting with question period and ministers' statements, those sorts of things. The values of Parliament are so much at stake.<sup>4</sup>*

*Simply put, a staggered approach is definitely the way to go.*

*One of the ways that could be done, which in fact has already been started with the way committees have started up again, is on a subject matter basis. I can easily see, say, a question period done on a thematic basis. You could say you're going to have three ministers one day and another three ministers the next week, and so on, so that you build up to full resumption. As the technology catches up and the health situation abates, you can continue to build up in that way.<sup>5</sup>*

---

<sup>4</sup> House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1st Session, 43rd Parliament, Meeting 13, 30 April 2020, 1340 (Gary O'Brien).

<sup>5</sup> House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1st Session, 43rd Parliament, Meeting 11, 23 April 2020, 1340 (Marc Bosc).



An incremental approach recommendation gives the House of Commons and all parties the ability to review processes. This would allow for the Members to work collaboratively on models that make the most sense for the constantly changing world we currently live in. The NDP agrees, the building of technological capacity is important for the House of Commons, however, the language of the recommendation under the section entitled Hybrid Model for Sittings of the House is not clear. It also is interesting that this suggestion that speaks to making the work of the House of Commons completely virtual, yet does not discuss the important factor of reviewing a hybrid model.

For the duration of the pandemic, over 30 Members have been coming to the House of Commons regularly to do the work needed to help all Canadians during this time. As we better understand the health risks of COVID-19, the second phase was to introduce the COVI committee virtually. A recommendation that reads to only have a 100% virtual sitting of the House undermines the recommendation to take an incremental approach.

## Voting

The committee's recommendation that voting be made virtual as soon as possible is deeply concerning. The committee heard very little evidence with regard to implementing virtual voting in Canada, in spite of hearing from a number of other jurisdictions who are working toward some variation of virtual or electronic voting. In fact, Speaker of the House of Commons Anthony Rota said to the committee on April 21:

*Voting is something that I don't see happening in the near future. That's something that requires some technology that personally I'm not yet comfortable with. What we'd have to do is develop a secure system that guarantees that everyone can vote and everyone can vote securely.*<sup>6</sup>

The NDP believes that voting of any kind beyond the current mechanisms in the House of Commons needs more scrutiny by the committee. Issues such as accessibility, security, verification, and timing systems need to be well understood not just by committee members but by all parliamentarians before such a recommendation should be made.

There are a multitude of options with regards to voting from outside of the Chamber of the House of Commons which should be reviewed as part of a more in-depth study on new ways for parliamentarians to vote. These include but are not limited to proxy voting, paired voting, block voting, electronic voting within the Chamber, remote electronic voting, and remote video voting. Each of these systems also still needs to be examined through both the lens of a fully virtual parliament and a hybrid parliament.

The committee heard repeatedly from witnesses that Members of the House of Commons are masters of their own domain. Decisions, such as whether to change how votes are conducted and which new system to implement, rest exclusively with Members of Parliament. To recommend that the House move forward without specifying with which voting system and how it is to be implemented leaves those decisions in the hands of the House of Commons administration. While the administration does

---

<sup>6</sup> House of Commons, Standing Committee on Procedure and House Affairs, Evidence, 1st Session, 43rd Parliament, Meeting 10, 21 April 2020, 1340 (Hon. Anthony Rota, Speaker of the House of Commons).

incredible work and has really shone through their hard work and creativity during this pandemic, they do not have the authority to make this decision.

To rush the implementation of virtual voting systems without proper scrutiny puts Canadian democratic principles at risk.

## **Conclusion**

The NDP are not in direct opposition to many of the recommendations mentioned above. The NDP simply believe that many of the recommendations require further study and a more in-depth look before committee members, and through them, Members of Parliament, are in a position to make informed decisions on these issues.

As all Members and the administration of the House of Commons have adapted to the reality that we are currently faced with, it is imperative that we do not take excessive risks by moving too quickly and know when it is time to slow down for thoughtful consideration. The NDP believes that the recommendation that advises the House of Commons to do the work of preparing a set of modified Standing Orders to use when faced with this type of situation gives all Members the opportunity to participate in this thoughtful consideration. Too many of the recommendations in the report are putting, in the NDP's opinion, the cart before the horse.

It is important for all Members to thank the amazing teams in the House who have modified their work environment both inside and outside of the House. The capacity to adapt and change to meet the needs of the Members of Parliament has been tremendous and reflects what an amazing team we have that supports Canadian democracy. It is the NDP's perspective that work should be recognized and that as we move through these uncharted territories the sacredness of our democracy be considered carefully.