

Reforming the Standing Orders of the House of Commons – A Green Approach

“Procedure may be boring to some, but it’s about the distribution and exercise of power. It really matters.”

The Hon. Jack Strawⁱ

1. Basic principles:

The 21st Century Parliament must reflect the best practice for Canadians, democracy, and the sustainability of the working life of Members of Parliament.

Our Westminster parliamentary system has been distorted over the decades as political parties gain more power. Our system looks increasingly presidential; but our system of government is not. Every “reform” of the Standing Orders has enhanced the powers of the majority in the interests of “efficiency.”

The role of Members of Parliament has been made increasingly unequal and less democratic. In our initial parliamentary gatherings, MPs were seen as equal, with even the prime minister seen as “first among equals” (*primus inter pares*). The growth in the power of political parties has steadily reduced the scope of action of individual members of parliament. Some of this has been incremental and accomplished through unwritten rules. Some has been the result of highly specific changes concretised in Standing Orders and legislation. The general drift has been toward increasingly centralizing the powers of the executive (prime minister and Privy Council) at the expense of the legislative.

In 2008, a report of the Centre for the Study of Democracy at Queen’s University concluded that Canada’s Parliament is “executive-centred, party-dominated [and] adversarial.”ⁱⁱ Even if the new government continues efforts to democratise parliament, without legislated and rule-bound changes, the characteristics of excessive party and PMO control remain a threat.

In the current discussion paper, the workings of the House are presented as a contest between parties as opposed to a place of deliberative democracy among members. This sentence from the March 2017 discussion paper is a good example of the failure to see parliament in Westminster terms:

“The impetus of all major reforms has had a common theme: a recalibration of the rules to balance the desire of the minority’s right to be heard with the majority’s duty to pass its legislative agenda.”

This characterization sounds fair and reasonable, but, in reality, it is appalling.

What is being proposed is that Parliament is all about the executive pressing through an agenda as long as the minority has its chance to squawk a bit.

Ideally, the parliament we create should reflect what Canadians want. Thanks to the Government of Canada's recent Vox Pop Labs exercise, we know that 70% of Canadians do not want one big party making all the decisions. Despite the fact that the question was weighted to suggest a response in favour of such a system, the Vox Pop respondents overwhelmingly said they would prefer a system in which a number of smaller parties worked together, even if it takes longer.

This finding puts in doubt the underlining assumption of the government discussion paper that the Liberals have a mandate to "modernize" parliament to make majority decisions faster.

There is no evidence for this proposition. On the contrary, the mandate in any reform should be to promote processes and procedures leading to respectful, collaborative decision-making.

If we want to do what Canadians want, we will do everything possible to reduce the climate of competitive hyper-partisanship. If we want to build the kind of parliament Canadians hope for, we must find ways to make parliament more respectful, more collaborative and more cooperative. The ideal legislative achievements of a renewed and reformed parliament would be legislation that reflected a political consensus.

A. How can we reduce political partisan conflict in Parliament?

One attractive option would be to eliminate political parties. The reality that it is impossible to do so is clear when one considers the entrenched interests of the parties and the impossibility of any decision to end their own claim on power and the hope of power.

Political parties are not mentioned in our Constitution. Westminster parliamentary democracy could function very well without any political parties, but with a House of MPs, each elected based on their personal attributes and commitment to represent their constituents, second only to their commitment to protect and defend the national interest. Such a House would pick the Prime Minister and cabinet from among their number.

Prof. Hugo Cyr of University of Quebec at Montreal has proposed that following an election, the House of Commons should vote to elect a prime minister. This could take place between the election of the Speaker of the House and the Speech from the Throne. This is neither radical nor undemocratic. We have a system of government by which the election of members of parliament determines which party will form government. The party that forms government has already chosen its leader under its internal constitution, through big US-style conventions. Cyr believes it is important to have such a vote, even if it is only symbolic, in order to underscore our system of government. He cites the fact that in a recent poll over half of Canadians think we directly elect a prime minister; which we do not.ⁱⁱⁱ

If our Parliament were based on non-aligned MPs, our voting system would not need reform. It is only due to the overlaying of political parties and their top-down control over members that the First Past the Post System (FPTP) fails us so badly. The FPTP system invariably creates a mismatch between the popular vote and the seat count for the political parties.

It is also only due to FPTP that striving for political consensus is out of favour. The system of rewards and punishments under FPTP creates incentives for ‘gotcha’ politics, wedge issues and a targeted appeal to a party’s ‘base.’ It mitigates against the call to higher purpose, a shared vision and a cooperative agenda.

I urge the House Leaders and fellow MPs to consider that the reason it is harder and harder to have a smoothly running parliament is not our rules; it is a worsening political climate of constant electioneering. The toxic drip on our democracy comes from our voting system. The best way to improve the level of discourse and cooperation across party lines is to return to the promise to replace FPTP with a system of fair voting in which the seat count and the popular vote are closely matched.

B. How can we create a more respectful parliament within the current perverse voting system?

Anything we do to break down the “us versus them” mentality of Parliament will be helpful. Can we consider changing seating within the House? What if MPs were seated alphabetically, and not by party? What if MPs were seated according to province or region, regardless of the banner under which they were elected?

What if we actually lived the fiction described by former Speaker Scheer in his ruling on Mark Warawa’s complaint that he had been silenced by his party whip?

Scheer ruled, “The right to seek the floor at any time is the right of each individual Member of Parliament and is not dependent on any other Member of Parliament...If members want to be recognized, they will have to actively demonstrate that they wish to participate. They have to rise in their places and seek the floor.”^{iv}

Thus, no change in rules is needed to eliminate the control of party whips and the recent and inane obsession with ‘QP prep.’ What if members rose in their seat, attempted to catch the Speaker’s eye? What if questions were, as our rules require, not being read in talking points, but actually posed in an effort to gain answers, accountability, and information?

What if committees changed the decision making process away from majority vote, and moved to a disciplined process based on seeking consensus? I still believe that if the Special Committee on Electoral Reform had had a decision-making model that allowed us to work for more hours, through weekends within a consensus model, we would have arrived at one proposal supported by all, instead of a majority report reflecting support from all but the Liberal members.

What if chairs of committee rotated? What if no additional salary were given, but all members of the committee had a turn as chair and all worked to achieve the best possible bill based on the evidence they receive from witnesses and policy experts within government?

2. Parliamentary Calendar must consider its climate impact

Thus far, debates about the number of days we sit has only related to convenience for MPs and comparison with provincial sittings. But Canada is an enormous country and flying MPs on a weekly basis to and from Ottawa has an enormous impact on greenhouse gas emissions. It is also a very large financial cost for the public purse. The cost of flights is not one felt personally by any MP. All flights and business class tickets are paid for by the public. Shortening the work week to four days actually increases the likelihood that every MP, every weekend, will be travelling. While some are close enough to Ottawa to take the train, most are not.

Ironically buying carbon off-sets is the only MP expense not considered to be eligible for expensing.

The large tension for many MPs is getting home to their families. This is also a particular challenge in Canada – more than in the UK or any province.

I do not know that there is a perfect solution, but I want to propose a work cycle similar to that of Atlantic Canada workers in Fort McMurray – a concentrated 3-4 weeks in Ottawa and then 3-4 weeks in the riding.

I propose we sit a 6 day week in Ottawa to get the maximum value and productivity of concentrated sittings – Monday to Friday and a half day on Saturday.

It is clear that a well-intentioned proposal to eliminate Friday sittings is seen by the public as an attempt to shirk our work. MPs and many journalists will know that is not true, but it is too easy a target in the age of ‘gotcha’ politics. No one will think MPs are shirking if we work a 6-day parliamentary schedule.

A 6-day work week over 3 weeks is more than enough to get a great deal of work done. It will likely cut the costs to the public of flights to the riding by more than half, likely by 2/3. It will also slash the GHG emissions of our travel.

Clearly, the biggest drawback will be to MPs with families living far from Ottawa. Consideration for more financial assistance for families to relocate to Ottawa is worth considering. The cost in overtime to Parliamentary staff will have to be considered as well.

3. Management of the House

A. Ensuring that prorogation is never again used illegitimately:

Shutting down the House of Commons to avoid a vote the governing party and Prime Minister know will be lost is virtually unheard of in Westminster parliaments of all Commonwealth

nations. In fact, if not for the Canadian experience, it would be totally without precedent. A prime minister in Sri Lanka tried it once, but the Governor General refused.

It has happened in Canada two times: once under Sir John A Macdonald (the Pacific scandal) and once under Stephen Harper in November 2008. Harper later prorogued again by phoning the Governor General, but without the immediate threat of a vote he was about to lose. In Sir John A. Macdonald's case, when the house resumed, it immediately dissolved and an election was held.

The government discussion paper states: "There have been instances where Governments have prorogued early in the session to avoid politically difficult situations. The Government committed to Canadians not to abuse prorogation in such a manner."

The fact that the government discussion paper presents this outrageous abuse of power in bland terms is somewhat unnerving. Stephen Harper's violation of parliamentary norms made it clear how much of our system depends on those with power choosing not to exercise it illegitimately. We have been bound by unwritten rules and invisible threads. The willingness of Stephen Harper to break those traditions brought to light how vulnerable we are to those who do not respect traditions. Had he not sought prorogation in 2008, we would not be discussing it now. It was unheard of; until it was not.

Professor Hugo Cyr made a specific recommendation on prorogation in the course of his testimony before the Special Committee on Electoral Reform (ERRE):

"Therefore my ... proposal is to amend the Standing Orders of the House of Commons so that asking for Parliament to be prorogued or dissolved without first obtaining the approval of the House of Commons automatically results in a loss of confidence in the Prime Minister. Consequently, the Governor General would not be bound by a prime minister's advice requesting the early dissolution or prorogation of Parliament without first obtaining the approval of the House of Commons."^v

The details of testing for parliamentary support were drawn from UK experience by Prof. Cyr:

"With regard to the possibility of a successor government should the House of Commons pass a non-confidence motion, I relied on the United Kingdom legislation. The Fixed-term Parliaments Act provides that where the government is defeated on a vote of confidence, an election will not be called until 14 days later, if there is no subsequent resolution to restore confidence in that same government or in the successor government that would have been formed in the meantime. Third, I propose to amend section 56.1 of the Canada Elections Act to allow for the early dissolution of Parliament with the approval of two-thirds of the members of the House of Commons. This enhances the role of members of Parliament. Once again, this proposal is based on an example of the British Fixed-term Parliaments Act. This is intended to give more weight to members of Parliament."

This approach was also supported by Prof. Peter Russell of University of Toronto. Professor Russell is professor emeritus and one of Canada's most respected political scientists. Both Cyr and Russell recommended the approach of the vote in order to ensure that access to prorogation

be restricted only to a Prime Minister who can approach the Governor General with the clear confidence of the House. Both also recommended that we change our standing rules to allow motions for a “**constructive non-confidence**” vote.

It was described by Professor Russell’s written evidence:

“Some parliaments – Germany, Spain and Sweden are examples – permit only constructive non-confidence votes. A constructive non-confidence vote is one that names an alternative prime minister. When a constructive non-confidence vote passes, it both defeats the incumbent government and indicates how a new, viable minority government can be formed without calling an election. This practice underlines the principle that in a parliamentary democracy the people elect a parliament (more precisely the confidence chamber of parliament) not a government. In Canada, regulating confidence votes is a matter that falls into the informal part of our constitutional system under the control of the House of Commons. I urge your committee in its research and travel to look carefully at how parliaments function under a system that requires confidence votes to be constructive.”^{vi}

As Prof Hugo Cyr pointed out, “This is a mechanism to prevent the opposition parties from joining forces to overthrow a government and from taking advantage of an early election to increase their number of seats.”

B. While fixing the risk of prorogation, let’s also set a maximum time between an election and the first sitting of Parliament:

Currently, there is no set requirement for an incoming government to convene parliament within a fixed time. While this loophole has not yet been abused by a prime minister who finds it more convenient to rule by executive fiat – without convening parliament - given the trend toward greater concentration of power in the executive, it is time to ensure parliament be opened within a set time period following an election.

I cite again the written evidence to ERRE of Prof. Peter Russell:

“Canada is virtually alone among parliamentary democracies in not having a rule requiring that after an election only a short time can elapse before the newly elected parliament meets. After an election, if no party has won a majority of seats, there must be time for party leaders to work out who has the best chance of forming a government with majority support, for a new prime minister (if there is one) to be sworn in, and for the prime minister to form a cabinet and prepare a throne speech, before the Governor General summons the new parliament. In Canada, other than the constitutional requirement that there be a sitting of Parliament every twelve months, there is no rule or established practice about the maximum time allowed before a new Parliament hold its first meeting. This produces unnecessary uncertainty and worry about implementing the results of the election. When no party has a majority in the new House of Commons, it delays the test of whether a new government has the confidence of the House and therefore has the right to govern.

“Australia has a rule that the Commonwealth Parliament must meet 30 days after an election. New Zealand has what amounts to an eight week rule. That should be the outside limit. Most European parliaments have shorter periods. The rule should take the form of an amendment to section 38 of the Constitution Act, 1867. Such an amendment can be made by an Act of Parliament.”^{vii}

Professor Cyr recommended that we follow the example of the United Kingdom and New Zealand in developing a Cabinet manual, by consensus.

“The British experience showed us how effective and useful such a manual can be when in 2010 none of the parties won a majority of seats. That evening, there were no rushed media calls of the type, ‘If the trend holds, the next government will be formed by...’ The political parties were given the time they needed to negotiate among themselves who would form the next government, rather than allowing the media to decide that very evening who would be the next prime minister. This is a step forward for democracy.”^{viii}

C. Electronic voting:

While the government discussion paper refers to some aspects of modernization from the UK, electronic voting by MPs is not one of them. The most recent edition of handbook on UK parliamentary procedures, How Parliament Works, (Rogers and Walters), relates the current state of debate in the UK:

“...for many people the idea of taking a quarter of an hour of valuable parliamentary time on a vote is inexplicable. Why not vote electronically? There is a good case for it, but also some powerful arguments against....

“...for many MPs a powerful argument for the present system is that it collects large numbers of members together for a few minutes, often at a predictable time. This brings backbench and frontbench MPs together (and many backbenchers may not actually see very much of those in government) and is a valuable opportunity to buttonhole ministers, or to gather support for some initiative... For most MPs, this adds a great deal of value to the otherwise often mundane business of voting.”^{ix}

For my part, as the leader of an unrecognized, but nationally engaged parliamentary party, I find the current voting system valuable in many ways. I believe it is important that members be physically present. Voting from our home ridings is not an acceptable option. It is not “modernization;” it is dereliction of duty.

I also think it can impact how we vote to see prominent MPs vote in ways that may break from party discipline. It can encourage others to do the same. I know that I have actually changed the way I plan to vote on rare occasions when someone I respect casts a vote I didn’t expect.

However, there is no question that our current system could be improved with an electronic innovation. I propose that we vote as now, with the Speaker calling for all those voting yea, and then nay. As we stand in sequence, each MP can simultaneously push a button, wired to our

desks, to signal our vote and lock it in electronically. This will relieve the Table Officers of confusion as they call out our names. The totals of our votes would be more quickly confirmed.

I also believe we should have the opportunity to record an abstention. Our current system makes no distinction between an absent member and one in the chamber who wishes to abstain.

D. Routine Proceedings:

I can see no justification for changing our approach to Routine Proceedings. The attempt to do so in the government discussion paper is to remove one of the few remaining tools of opposition parties to get the government's attention. There are a litany of procedures we used to have that have been removed by government parties that found the opposition annoying. Any significant show of defiance will get the process changed in the name of streamlining.

Remember the incident of the ringing of the bells? In 1982, the bells rang for six days as Progressive Conservatives protested the Liberals' national energy programme. Or in 1999, when the Alliance Party brought 700 amendments to the Nisga'a treaty at report stage? Those opportunities are gone. Government parties can keep changing the rules to deprive opposition parties of making their point, but new ways will be found. As noted above, it is far better to find ways to foster cooperation than hard-wire parliament for bulldozer passage of bills.

4. Management of Debate

A. Time Allocation

The government discussion paper proposal for programming is one of its most controversial. It could certainly never be accepted and could never work if the change to that system was not approved unanimously by parties in the House. The paper highlights the use of programming in the Westminster parliament in the UK and notes it was brought in initially as an experiment. But the government paper oversimplifies some aspects of the UK procedure. It does not apply to every bill, nor would it work at all in the UK without substantial consensus, each time, in advance.

In 1997, the Modernization Committee of the UK parliament suggested programming as a half-way measure between informal agreement between House leaders and guillotine. The approach in the UK is that when a bill is proposed for programming, discussions take place between all sides of the House, including backbenchers. It is not exclusively a decision of House Leaders. The type of committee to study the bill is agreed upon. The decision is made immediately after second reading. There is no debate on the use of the measure, so consensus is key.

The UK parliament also makes use of draft bills. In the draft bill process MPs from all sides of the House work to develop the best bill. At least in theory, the process is de-politicized because "ministers have invested less political capital in it, and changes will not necessarily be seen as defeats."^x

It certainly could be considered in our parliament, but much more work needs to be done. Nothing should be imposed without unanimity. Despite its broad acceptance in the UK, it can still be “bitterly disputed.”^{xi}

B. Questions:

The proposal to move to the UK style of Question Period is to adopt the practice of having the Prime Minister answer questions only one day a week. Of course, the UK parliament has entirely different rules for questions to government ministers and to the prime minister. Most questions must be submitted days in advance. Even the right to pose urgent questions must be put to the speaker the day of the question period. No questions are ever asked without notice to the government.

Our parliament has gone a different way.

We should not pursue one modernization feature from the City of Westminster without looking at the full ambit of approaches in the UK. While our parliaments share common roots, the trees of our modern parliament have grown in different directions.

MPs in parliamentary debate in the UK can rise during a colleague’s speech and if that member “gives way,” the questioner may speak without being recognized by the speaker. There are no such things as “recognized parties” in the UK parliament. Not all MPs can fit in the chamber at the same time. And the current plan in the UK is to redraw boundaries to reduce the number of MPs by 50.

None of those things are happening, or are allowed, in our parliament.

Do we want to review all our rules and measure them against Westminster? In the case of our Question Period, we have a whole culture of a different approach. Do we want to pull the aspects we like from the UK without regard to the broader differences in our current practice?

C. Omnibus bills

I support the proposal to clearly empower the Speaker to disallow attempts to place unrelated bills under the same rubric, especially in the guise of budget bills. This subterfuge was used in the Harper minority government to force through changes that the opposition parties were unwilling to defeat if they were not yet ready to go to an election.

The Speaker in the ruling in response to my point of order challenging 2012’s C-38 omnibus budget bill ruled that without the House providing clear guidance, the Speaker cannot rule an “omnibus bill” out of order nor could he split the bill. Having all parties in the House agree to the criteria of a common theme to unify any attempted omnibus bill is guidance the Speaker needs.

5. Management of Committees:

This section significantly misrepresents the treatment of parliamentary parties with fewer than 12 elected MPs. I am the leader of a federal political party that ran 336 candidates in the last election and has run full slates since 2004. In 2015, Green candidates received over 605,000 votes, despite a strong tide for “strategic” voting that cut our support in half in the last few days of the campaign. My seat in parliament is as a named Green MP. I am not an independent.

The motion drafted by the Harper PMO and pushed through every committee, only to be pushed through the newly constituted committees following the 2015 election by the Trudeau PMO is not “expanding the role of independent MPs.”

It is eliminating a right that exists under our current standing rules. It is coercive and represents the first time in the long history of parliament that a majority government, much less two in a row, have used their muscle to shut down the rights of a single MP. I have never used this new “opportunity” to present amendments in committee without protesting to each and every committee that I did not want to be forced to bring amendments to committee. I want to exercise the right I already have to bring substantive amendments at Report Stage.

As for offering that MPs representing parties with fewer than 12 MPs can be ex officio members of committees is an improvement, but still a condescension. There are multiple examples of MPs in parties with fewer than 12 MPs, and even of actual independent MPs being full members of committees. One need only reach back to the 35th Parliament to find that NDP members were associate members of a number of standing committees, despite the caucus being unrecognized with only 9 elected MPs. Even independent members have been full voting members of standing committees as recently as 2007. Only tradition blocks this decision. As all of us are equal and all of our electoral districts are equal and all Canadians are equal, full rights on committees are long overdue.

The misunderstanding about the status of MPs in parties with fewer than 12 MPs originated in the 1963 legislation to give larger parties public funds.

Only recognized parties were entitled to additional financial resources. In all other respects, members of smaller parties and independents had all the same rights as MPs in larger parties.

Over time, with no further changes of the rules, it became practice to exclude MPs from parties with fewer than 12 seats from parliamentary standing committees, from time in question period and from use of various parliamentary procedures, such as Supply Day motions. Exceptions were made. Shortly after the new rules came in, when the Railliment Creditiste split off from the Social Credit Party, the Social Credit Party dropped to 11 members. Still they were allowed to be seated as a recognized party and had access to the procedures – if not the money – they had once had. But the larger parties continued to undercut smaller parties.

In 1990, the Bloc took a run at the argument. The Bloc went up against the actual rule that parties with fewer than 12 seats should not have access to additional funds. The Bloc asked the

Speaker directly to rule it had a right to additional monies. The Speaker at the time, the Hon. John Fraser denied their request, but did not suggest small parties had no rights:

*“...it is important to note that the decision does not mean that the members in this group are impeded from full participation in the work of the House or that they are being deprived of support necessary to represent their constituents adequately.” “To date these efforts [to get research funds from the BoIE] have proven unsuccessful, but it is a long and dangerous leap to conclude from there that the basic rights and privileges of those Members are somehow being abrogated. A search of the Debates will show, on the contrary, that the honourable Member for Shefford and his colleagues have been extended every courtesy by this House and that **the Chair has safeguarded their participation in ways that are fully in keeping with our procedure and practices.**”^{xii} (emphasis added)*

Despite Speaker Fraser’s defence of other “basic rights and privileges” for MPs in smaller parties, by 1994, the presumption that MPs in parties with fewer than 12 members were to be relegated to rear corners in the back of the House and be denied daily time in Question Period had become solidified.

It is time to revisit the rigidity of what has no basis in legislation. Without granting public funds to smaller parties, the rights and privileges of MPs as equals must be restored.

Conclusion:

I do not oppose changing our Standing Orders. Many needed improvements are critical. Ensuring that the legislative supremacy of Parliament is respected is crucial. We must never again have a Prime Minister operate as a one-man, (or one-woman), top-down elected dictatorship. The need for a fair voting system remains at the top of the list in protecting Parliament from hyper-partisanship.

We need to protect our parliament from abusive prorogations and perverse, illegitimate omnibus bills. There is much we can do together, but the timeline must be reasonable. It must embrace a process that provides adequate time and a fair process for full parliamentary consensus. The current Liberal motion before PROC does not provide either.

My own view is that we need not read ill-intention into the draft discussion paper and process. I take the Government House Leader at her word. This was a trial balloon. It is now a burst balloon, but it got the discussion going. Let’s move to the next steps, and with good will on all sides, let’s start down the road to significant reforms.

ⁱ Straw, Jack, Last Man Standing: Memoirs of a Political Survivor, (London: MacMillan) 2012.

ⁱⁱ Thomas S. Axworthy, “Everything Old is New Again: Observations on Parliamentary Reform,” Centre for the Study of Democracy, Queen’s University Press, April 2008.

ⁱⁱⁱ Hugo Cyr, Testimony to the Special Parliamentary Committee on Electoral Reform, July 27, 2016.

^{iv} Susan Delacourt, Speaker Andrew Scheer’s ruling yields small victory for MPs’ freedom of speech, Toronto Star, April 23, 2013.

^v Hugo Cyr, Testimony to the Special Parliamentary Committee on Electoral Reform, July 27, 2016.

^{vi} Peter Russell, Testimony to the Special Parliamentary Committee on Electoral Reform, July 26, 2016.

^{vii} Ibid, Russell.

^{viii} Ibid, Cyr.

^{ix} Rogers, Robert and Rhodri Walters, How Parliament Works: City of Westminster, (Routledge: London UK) 2015, p.156-157.

^x Ibid, p. 180

^{xi} Ibid. p.180

^{xii} Fraser, J, “Privilege” House of Commons, Dec 13, 1990. Retrieved from:
<http://www.lipad.ca/full/1990/12/13/15/#3854131>