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Written Submission
House of Commons Standing Committee on Procedure and House Affairs

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Background

The House of Commons has tasked the Standing Committee on Procedure and House Affairs with the task of reviewing the current Standing Orders to reflect on what amendments are required to enable the Parliament to function effectively during a protracted emergency, such as the current COVID-19 pandemic. The focus of this review is on the immediate needs of the House to adjust to the current emergency situation and the rules that may be in place if and when another similar emergency commences.

The Committee has requested submissions from academics and legal and technical experts with regard to their perspective on the issue currently before the Committee. This submission is based on the experience of the author as a former MLA, House Leader, Deputy Speaker and as a global adviser to parliaments.

Core Principles for Emergency Parliament Sitings

To start, it is crucial that any revised rules and Standing Orders reflect a set of principles that are based on the status and importance of Parliament as an integral component of our democratic system and the need to ensure that during an emergency situation the principles upon which our democracy are based are not jettisoned.

It is submitted that any list of core principles must reflect:

- **Parliamentary Supremacy:** An active Parliament during an emergency is not an option, it is a necessity. To avoid future debates about if and when the House will be called back, it is important that the institution is recognized as supreme, as is reflected in our Constitution, and can automatically initiate its own proceedings.

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- **Inclusivity:** As a country we have made great strides in women's political empowerment (with much more to do). The rules to be applied during an emergency by the Parliament must **ensure both genders are able to participate fully**, including during in-person sittings. In addition, as a vast federal state, **regional representation** is also vital to the deliberations of Parliament and must also be protected during an emergency.
- **Cross-Party Consensus:** During an emergency it is critical that all political parties commit to working in a collaborative manner and to ensure consensus is the overarching objective to ensure decision-making has the broadest possible support and reflects a national consensus.
- **Limited Scope:** Any Standing Order or other legislative changes that will be triggered during an emergency must be limited in scope. This includes both regard to **time and deviation from standard practices**. Any changes to the rules of how the House operates during an emergency must have a sunset clause that allows for those rules to end when the emergency is over. As for standard practices, the shift to virtual meetings and limited membership in-person sittings must be minimized so only to be used as necessary to ensure the work of Parliament continues as effectively as possible.

If the revised or additional Standing Orders reflect these principles there will be a strong chance the work of the House of Commons can continue while reflecting the core principles upon which our country was founded.

Recommendations

Once the core principles for any emergency parliamentary procedure have been agreed upon, it is then important to consider the specific mechanisms and procedures that will be required to ensure those principles are implemented. Broadly speaking, the rules and procedures put in place must have the flexibility to work in any circumstance that may result in a protracted emergency. It is unlikely, after this pandemic, that the exact same circumstances will arise in the future, so there must be a level of applicability to the rules developed so as to be adaptable to similar, but not identical, circumstances.

With regard to specific rules, the following should be considered:

1. Emergency Procedure Standing Orders must include a mechanism that promotes cross-party collaboration and consensus.

Over the years the Canadian House of Commons has developed a series of informal practices that have resulted in the Government House Leader having significant discretion and authority to define the agenda of the House. This is curtailed somewhat where there is a minority government or through informal processes where the respective house leaders for all parties meet on a routine basis. During an emergency these informal practices must not be abandoned. During such times it is vital that partisan politics be curtailed and consensus amongst political elites become the norm.

This will ensure the decisions being made and the laws being approved reflect a broader national consensus than might otherwise be expected during non-emergency times.

There is an example of this currently in New Brunswick and Prince Edward Island (both with minority governments) where special cabinet committees have been struck in each province that include leaders of all political parties represented in the respective legislatures.²

The model from New Zealand may also be of value. In New Zealand the Standing Orders establish a Business Committee.³ The Business Committee is made up of representatives from all the political parties recognized in the Parliament. It works on a consensus basis, with near-unanimity required for decisions to be taken, as it decides on the sitting calendar and the order paper for each session.⁴

Requiring such a committee with similar procedures during an emergency would ensure that the work of the House of Commons, even where there is a majority government, would be conducted in a manner that promoted consensus and encouraged broad national support for government decisions. The Standing Orders could be written to allow for such a committee to be established where emergency procedures are initiated.

2. Emergency Procedure Standing Orders should be separate Standing Orders that can be commenced and ended quickly.

Emergency procedures should be included in the current Standing Orders of the House of Commons as stand-alone rules that can be used when an emergency is triggered. This prevents the need to suspend certain Standing Orders and ensures the Standing Orders remain intact throughout an emergency.

One key question is how the emergency procedure rules will be triggered and when they might end. This may be made relatively simple when the House of Commons has declared and revoked a declaration of a federal emergency under the *Emergencies Act*⁵.

However, like with the current pandemic, how will the rules be triggered and ended where there is no federal emergency declared? The rules will require a process by which a motion to initiate or end the emergency procedure rules will be introduced and

² For example the New Brunswick Cabinet Committee on Novel Coronavirus - https://www2.gnb.ca/content/gnb/en/news/news_release.2020.03.0113.html

³ Sections 77-82 of the New Zealand Standing Orders define the powers and structure of the Business Committee. https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders-2017-by-chapter/chapter-2-sittings-of-the-house/#_Toc490062809

⁴ A more detailed explanation of the work of the Business Committee of the New Zealand House of Representatives can be found here: <https://www.parliament.nz/en/get-involved/features/what-does-the-business-committee-do/>

⁵ R.S.C., 1985, c.22 (4th Supp.)

debated.⁶ Consideration should be given to the need for a supra-majority of two-thirds of all MPs to initiate and end such rules, thus ensuring the limited use of such rules except where there is a broad consensus that there is an emergency and to avoid the overuse of such special rules.⁷

3. Emergency procedures should rely on a hybrid model of parliamentary procedures.

Many parliaments globally are experimenting with how they can remain effective and active during the pandemic, which is requiring social distancing. The House of Commons has moved to a hybrid approach – holding in-person and virtual sittings. But as the Committee is aware, the virtual sittings are not actually the House of Commons sitting in plenary session, but a special committee established for the purpose of conducting ministerial accountability sessions.

Other briefs to this Committee have noted that there may be constitutional limitations that may prevent the House of Commons from meeting only virtually. I will leave that debate to those more scholarly than myself, but to say that there are good reasons for in-person sessions to be maintained during an emergency. The “art” of law-making is not well suited for distant deliberations. The back-and-forth of debate and the informal discussions that are held that few may see outside of the halls of Parliament, but which are critical to the making of quality legislation, cannot be abandoned during a time when critical new legislation may be approved.

4. Where the House of Commons meets during an emergency with a reduced number of MPs, there must be rules that ensure the process remains inclusive of both genders and regional representation.

As has been the case during this emergency, there may be circumstances that require in-person sessions of the House of Commons under social distancing conditions. This has resulted in the number of MPs sitting in the House being just above the quorum of 20 members. In those circumstances it is critical that the rules mandate that at least 40% of the MPs in attendance are from either gender. This will ensure that the voices of both men and women are being heard during the emergency process. In addition, requirements should be put in place to ensure that at least one MP from each province and territory is in attendance.

5. Expedited approval of Bills should be the exception – not the norm – during an emergency.

The process for approving Bills in several stages has merit even during an emergency. As was seen recently, the New Zealand House of Representatives approved the wrong version of pandemic-related emergency legislation because it passed all stages in one

⁶ Sections 58 and 59 of the *Emergencies Act* may provide some guidance as to how such a motion can be managed in the House of Commons

⁷ Standing Orders 53 has a similar provision with regard to suspension of the Standing Orders for urgent business, ensuring that such a suspension can only occur where there is near unanimity in support of the motion.

day and no one noticed that the wrong version of the Bill was tabled for debate and approval.⁸ The standard practice of deliberating on Bills over multiple sessions should be maintained. There may be exceptions that require urgent approval, but these should be unusual and require special procedures for their rapid adoption, as is the case currently.

6. Accountability and oversight can be the focus of standing committees meeting virtually.

Standing committees of the House of Commons have started to meet virtually. The House of Commons must ensure it has the infrastructure and technical capacity to ensure all standing committees (and select committees, where appropriate) can meet securely.

In addition, any emergency procedure rules adopted by the House should reflect the need to ensure accountability and oversight is focused on the work of the committees. Some might argue that even during “normal” times the bulk of the oversight work of the Parliament is conducted through its committees. During an emergency the committees should be the focal point for such work and should be provided with the powers and authority to hold the government to account. This may include special procedures for the calling of meetings or summoning witnesses where a minority of committee members make such a request, as a means of ensuring the committee work cannot be closed down or stopped from being initiated by a government majority.

⁸ *Parliament Passes Wrong Law in an Afternoon of Urgent Lawmaking*, 01 May 2020, Stuff.co.nz
<https://www.stuff.co.nz/national/300002365/parliament-passes-the-wrong-law-in-an-afternoon-of-urgent-lawmaking>