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Chair: Ms. Ruby Sahota





## Standing Committee on Procedure and House Affairs

Thursday, February 18, 2021

• (1105)

[English]

**The Chair (Ms. Ruby Sahota (Brampton North, Lib.)):** Good morning, everyone. I call this meeting to order. Welcome to meeting number 24 of the House of Commons Standing Committee on Procedure and House Affairs.

I'm going to go through some of the formal remarks, just because we've had so many changes of membership and perhaps changes in staff, and especially for the benefit of the witnesses we have before us today. Then slowly I'll reduce my introductory remarks once everybody is comfortable with what is happening today.

Today's meeting is taking place in a hybrid format pursuant to the House order of January 25, 2021.

Today, we have members and witnesses participating remotely using the Zoom application, and the proceedings will be made available via the House of Commons website.

The webcast will always show the person speaking at the time, not the entirety of the committee. Hopefully, right now you have your screen turned to the grid view so that you can view everyone. That is not how it's going to be webcast, but it is the best format for you to use in real time so that it feels as much as possible like a real committee meeting.

Today's meeting is taking place in the Zoom webinar format. Webinars are for public committee meetings and are available only to members, their staff and witnesses.

Members may have remarked that entry to the meeting was much quicker and that they each immediately entered as an active participant. With the exception of a few technical difficulties that we've had this morning, all functionalities for active participants remain the same. Staff will be non-active participants only and can therefore only view the meeting in gallery view.

I'd like to take this opportunity to remind all participants to this meeting that taking screenshots or photos of your screen is not permitted.

Given the ongoing pandemic situation and in light of the recommendations from health authorities, please remain a healthy and safe distance from all those attending the meeting in person. Since there are no members or witnesses there, this is just a reminder to all of the staff in the room.

As chair, I will be enforcing these measures for the duration of the meeting. I thank everyone in advance for their co-operation.

Since everyone is participating virtually, let me just remind you to unmute and mute yourself. This won't be done for you, so remember to unmute yourself before speaking.

At the bottom you can choose either "floor", "English" or "French" for interpretation. Apparently you don't need to switch anymore between the two when you change languages.

I will keep a list of those who have a point of order through the "raise hand" function at the bottom of your screen. If there is a point of order, then, please raise your hand using the toolbar.

Today, for the first half of the meeting, from 11:00 to 12:00, we have witnesses.

I'd like to welcome before us today Professor Duane Bratt, a professor of political science at Mount Royal University, and Professor Patrick Taillon, professor in the faculty of law at Université Laval.

Before hearing from the witnesses, who both have opening statements, I'd like to let members know that following the panel of witnesses we will have an election for the first vice-chair position, which fell vacant when Mr. Doherty left the PROC committee. Hopefully we'll be able to do that right after this panel.

We will follow that by going in camera. You've been provided a link by email. We will be continuing with our draft report on the election and COVID-19 study. Once the draft report is completed and approved, we will hopefully move on, if we have some time left, to committee business so that I can update you on the prorogation study.

Professor Bratt, would you start with your opening statement, please.

• (1110)

**Dr. Duane Bratt (Professor, Political Science, Mount Royal University, As an Individual):** Thank you to the committee for inviting me. I appreciate doing this by Zoom so I didn't have to fly to Ottawa, as much as I enjoy Ottawa.

I will read my opening statement and then I can flesh it out during the question period.

Prorogation is an important parliamentary tool. It allows for a government reset in between elections. However, it's a tool that can be and has been abused by governments, particularly when they're in a minority situation. Before getting to the matter of August 2020, I will give a short list of recent and controversial prorogations by both Liberal and Conservative governments.

In 2002, Prime Minister Jean Chrétien prorogued Parliament. This allowed Chrétien to avoid tabling a report to the House of Commons public accounts committee regarding the sponsorship scandal. Unusually, this was done by a majority government, not by a minority government.

Then we have the episode in December 2008 with Prime Minister Stephen Harper. This was probably the most controversial case in Canadian history. Harper had won a minority government weeks before, but was facing a non-confidence vote which he would surely lose. The other party leaders, Stéphane Dion, Jack Layton and Monsieur Duceppe, signed agreements signalling their intent to defeat the government. Because it was so close to the previous election, there would likely be no fresh election, and instead Stéphane Dion would be permitted to form a new government. To delay the vote, Harper prorogued Parliament. I will return to this case again.

The third case was January 2010 to March 2010, also by Prime Minister Stephen Harper. The stated reason was to keep Parliament in recess for the duration of the Winter Olympics in Vancouver. However, it was strongly suspected that Harper wanted to avoid ongoing investigations in the Afghan detainees affair. This case was quite similar to the August 2020 prorogation: the minority government facing damaging committee investigations.

This brings us to the August 2020 to September 2020 prorogation.

The reason for the throne speech was prorogation. The official reason for the decision to prorogue Parliament was to allow a government reset to address the COVID-19 pandemic and its economic fallout. Without a doubt, this is a very valid reason and would absolutely have justified proroguing Parliament. Responding to COVID-19 probably did play a role in the decision-making that led to the decision to prorogue.

However, I would argue that a much more important rationale was the WE scandal. The Canadian government had given a sole-source contract to the WE Charity to administer a student volunteer program. However, WE had very close ties to the families of Prime Minister Justin Trudeau and then finance minister Bill Morneau. The scandal led to Morneau's resignation and increased scrutiny from parliamentary committees into the role of Trudeau, the Prime Minister's Office, other ministers and senior members of the public service. Proroguing suspended those investigations and allowed the Trudeau government six weeks to try to change the channel with Canadians.

There are two key pieces of evidence that I have compiled to justify my argument.

First was the timing of the prorogation. As I said, COVID-19 became an important issue in March 2020. The government responded with a series of health responses and unprecedented economic responses throughout the spring of 2020. If at any time in the spring

of 2020, the government had decided to prorogue Parliament in order to give it more time to effectively respond to COVID-19, that would have made perfect sense. Waiting until August, and only after the WE scandal had been percolating for weeks with future bad news for the government, showed what I believe was the real political calculation.

A comparison to Stephen Harper in 2008 is in order.

In the fall of 2008, as the global financial crisis was hitting, that was a legitimate justification to prorogue Parliament, even though we had just had a federal election weeks before. In fact, the new throne speech did respond to the global financial crisis. However, as I argued above, the real reason was to delay an imminent non-confidence vote in the hopes that the Liberal-NDP-BQ coalition would collapse, which is exactly what happened.

• (1115)

Second, was the throne speech itself. Speeches from the throne are usually a one-day story. There is some buildup, but they are usually vague visions of the future direction of the government. However, the one that the Justin Trudeau government delivered in September 2020 was supposed to be significantly different.

There was speculation for weeks about its contents. It would be delivered in the midst of the COVID-19 pandemic and record levels of government spending. The speech followed Parliament's prorogation with a looming threat of a non-confidence vote that would plunge Canada into an election. If these stakes were not high enough, Trudeau and the opposition leaders would give separate television addresses to Canadians, timed for the supper-hour news in Ontario and Quebec, but sadly for those in the western provinces like myself, it was in the afternoon, and most people missed it.

Unfortunately, despite the hype, there was not much substance to the Speech from the Throne. If the reason for prorogation was in fact COVID-19, the Speech from the Throne would have been laser-focused on how the government would respond, both through health measures and economic responses. It would have indicated new programs and policies. Instead, the content was a rehash of previous federal programs, such as the Canadian emergency wage subsidy, and promises that had been repeatedly made, such as strengthening child care programs and creating a national pharmaceutical program.

These could have been refocused as a policy response to COVID-19, but were not really. Instead, it resembled a campaign speech for the next election, which could have arrived soon after.

The television address was even worse. I'll skip over some of this stuff. The television address was really an opportunity for Trudeau to summarize the throne speech in his own words, and not the Governor General's, that had only been delivered a couple of hours previously. This was a campaign speech.

Ultimately, the Speech from the Throne was not primarily about a reset due to COVID-19. Rather, it was an elaborate effort from the Trudeau government to distract Canadians from a political scandal.

With that, I will conclude my opening statement, and wait for questions.

**The Chair:** Thank you, Professor Bratt.

Professor Taillon.

[*Translation*]

**Mr. Patrick Taillon (Professor, Faculty of Law, Laval University, As an Individual):** I'd like to thank the committee for the opportunity to participate in this discussion on the circumstances surrounding the government's use of prorogation this past summer. I will try to keep my remarks brief.

The first point I would like to make is this: prorogation is a controversial mechanism in our parliamentary law. It can be used as a delay tactic to avoid the usual mechanisms for settling disputes. The strength of the parliamentary system, as compared with the presidential system in the U.S., is that it normally prevents a dispute between the House of Commons and the executive branch from dragging on. There are ways to settle disputes: the dissolution of Parliament and the non-confidence vote. Who decides? Voters.

In certain circumstances, prorogation can be used to pervert the functioning of a parliamentary system, which relies on the use of non-confidence votes and dissolution to settle disputes. Thus, prorogation is used as a tactic to delay and prevent a confidence vote. That's not always the case, but it does happen.

In the summer of 2020, a minority government faced an impending confidence vote and thus a threat. The same thing happened in December 2008, but of course, the threat was more explicit than it was in the summer of 2020. On top of that, the government was dealing with a parliamentary investigation into the WE Charity scandal and the unpredictable crisis caused by the COVID-19 pandemic.

In the government's defence, these issues are often seen through a glass-half-full or half-empty lens. It could be argued that the Prime Minister and the finance minister had at least co-operated with the investigation by taking the time to appear before the committee prior to the proroguing of Parliament. Be that as it may, prorogation put an end to the investigation. Was that the purpose or just a side effect? One thing is clear: it was one of the results.

That said, beyond the matter of the investigation, the government's use of prorogation in the summer of 2020 strikes me as all the more questionable. After all, it had the effect of putting the government's short-term interests—changing direction, putting an end to the investigation and shutting down the study of bills—ahead of the best interests of the federation, in my view, given the unprecedented crisis the country was facing. If the government had been

acting in the best interests of the federation, it would not have deprived itself of the parliamentary process and legislative toolbox in the midst of a crisis.

In the weeks and months when Parliament was shut down, the government may have needed to pass legislation amending the Canada emergency response benefit or administer the Emergencies Act, for example. Thank goodness that wasn't necessary, but given how unpredictable and hard to manage the crisis was, the best interests of the federation demanded that Parliament and the legislative process remain accessible. By shutting them down, the government put all of its eggs in the executive powers basket and sent the message that it could do without legislative tools in the massive undertaking that was the response to the COVID-19 pandemic. I would say the government confused its legitimate interests with the best interests of the federation.

The government could have done better in two ways. First, it could have opted not to prorogue Parliament. By not proroguing, the government would not have taken the risk it did. Second, if it felt so strongly about proroguing Parliament, the government could have handled it better by proroguing for a much shorter period of time. The results would have been the same: terminating the investigation, ending all proceedings before Parliament and providing an opportunity for a throne speech. It would have been sufficient to prorogue Parliament for just a day. In that scenario, the government would not have taken the risk of forgoing the parliamentary toolbox and legislative process in the midst of a crisis.

• (1120)

In conclusion, determining whether a decision to prorogue Parliament is controversial and politically expedient depends on the context and political judgments, which ultimately lie in the hands of parliamentarians and voters. It's up to them to decide.

I humbly submit that the use of prorogation in the summer of 2020 was controversial and was a way to evade a possible confidence vote. Above all, it was a way to put an end to an investigation and to face a confidence vote weeks later on the agenda laid out in the throne speech, rather than as a direct result of the investigation findings.

If there is anything I can impress upon you, it is this: a shortcoming of our parliamentary system is that the rules around prorogation, and the powers of the governor general, the prime minister and the House of Commons tend to be unclear, unwritten and not enforced by the courts. They are referred to as constitutional conventions, and rather than mitigate crises, these unclear rules and conventions sometimes have the effect of exacerbating them.

The 2008 prorogation is a perfect example. The rules of the game were not clear, written down or enforceable by the courts. During the period of tension between Stephen Harper's minority government and then governor general Michaëlle Jean, the rules had the effect of exacerbating the crisis instead of alleviating it.

I applaud the committee for taking the time to examine how our institutions work. I encourage parliamentarians to consider codifying our unwritten rules more effectively, as New Zealand and the United Kingdom have done. That may be too bold of a request, but parliamentarians should not fear the taboo of constitutional reform. They must not turn a blind eye to the gaps in our institutions; those institutions deserve better and improving them is not something to shy away from.

Thank you.

• (1125)

[English]

**The Chair:** Thank you, Professor.

We're going to keep the timing tight. Sometimes I give a little leeway, but today I don't think we have enough time. The statements went over a bit, but they were very valuable, and we appreciate having both witnesses here.

Mr. Nater, you have six minutes.

**Mr. John Nater (Perth—Wellington, CPC):** Thank you, Madam Chair. I would echo your comments that these were very useful comments from both of the distinguished academics with us today.

Thank you to both of you for joining us.

Professor Bratt, I might start with you. You had made some interesting comments in your opening statements that hark back to comments made by Minister Rodriguez earlier this week. He told this committee that the one and only reason for prorogation was the reset for the COVID-19 crisis.

You rightly noted that it is an important issue and one that would in theory be worthy of a reset, but you made some interesting comments about the speech itself being basically a rehash of previous announcements and not really the grand occasion that might have been envisioned for a reset.

Would I be right in suggesting in your comments on this that the minister might have been putting a bit of a political spin on the one and only reason, and would you agree that the primary reason was a way to get out of the difficult political situation related to WE?

**Dr. Duane Bratt:** I have no doubt that COVID was part of the decision-making, but I believe it was not the primary driver, for the reasons that I explained. I think the primary driver was to delay and try to change the channel as related to the WE scandal.

On a decision of this importance, there's never one single factor. The question we have to look at is, what is the real driving factor as opposed to other smaller mitigating factors?

**Mr. John Nater:** Thank you for that.

To that end as well, we know that the advice to the Governor General is given rightly by the Prime Minister of the day, the only person who has the tradition and the constitutional right to provide advice to the Governor General.

In this case, obviously we have not heard directly from the Prime Minister. Would that be an avenue that you think this committee

should pursue, hearing from the Prime Minister, as well as some of his senior staff?

**Dr. Duane Bratt:** Absolutely. I did watch when the Prime Minister attended, I believe it was, the finance committee back in July over the WE scandal. I thought that was a valuable testimony.

I think asking him directly about this, about his rationale, not necessarily the conversation he has with the Governor General—I think that is privileged—but what the decision-making around this was and to be able to probe some of those questions.... Absolutely.

**Mr. John Nater:** I'll throw open this next question to both you and Professor Taillon.

Are you aware of anything that would have prevented the Prime Minister from announcing at an earlier date, perhaps on August 18, that it was his intention to request prorogation from the Governor General at a future date, closer to September, but not formally requesting until closer to the date?

Professor Taillon, you made some interesting comments about putting the interests of government over the interests of Canadians, taking away the tools of Parliament during that period of time.

Are either of you aware of any blockages that would have prevented the Prime Minister from announcing his intention to seek prorogation at a future date but allowing committees, in particular, to continue their good work during that time period?

• (1130)

[Translation]

**Mr. Patrick Taillon:** Personally, I can't see anything that would prevent the government from proroguing Parliament for a shorter period, declaring its intention to prorogue or allowing committees to continue their work until prorogation. Once prorogation is over, there is nothing stopping members who support the government from working together to follow through with investigations that were under way before prorogation. To my mind, all of those things are possible.

[English]

**Mr. John Nater:** Professor Bratt, do you have any comments on that same topic?

**Dr. Duane Bratt:** Yes. There's nothing stopping you from announcing in a press conference that you intend to prorogue two weeks hence or three weeks hence. There's nothing stopping you from doing that. In fact, there's nothing to prevent you from reversing that three weeks later, saying, "We don't need to do this now." There's nothing wrong with that, but I would agree with my colleague. A six-week prorogation is quite unusual. It was a significant length of time.

**Mr. John Nater:** Great, thank you for that.

To that end as well, there's been a fair bit of stock put on the importance of holding a confidence vote by the Prime Minister on the return after the Speech from the Throne. I think the official quote—and I'll read it—was "duty-bound and honour-bound to ensure we had the continued confidence of the House".

To both of you as well, some have suggested that this was almost a way of fishing for an election before the second wave hit. Would you agree that there are other procedural tools that would have been available to the government, without prorogation, to have a confidence vote to ensure that it was clear they had the confidence of the House of Commons? Would you suggest there are other tools outside of prorogation to have gone that route?

**Dr. Duane Bratt:** They could have simply put in a resolution to the House asking for confidence. They didn't need to prorogue. They didn't need a Speech from the Throne. The government can declare that this item is a matter of confidence and have a vote on it. Yes, there are other reasons they could have done that besides proroguing. That didn't require a confidence vote.

**Mr. John Nater:** Given the speculation of the timing of the prorogation and the documents that were to be tabled almost immediately, the next day, would you suggest we look at some of the conversations held between the government and those entities that were to table documents to see what information they had prior to prorogation?

**The Chair:** Maybe give just a yes or no, please.

**Dr. Duane Bratt:** Yes.

**Mr. John Nater:** Thank you.

**The Chair:** Monsieur Lauzon.

[Translation]

**Mr. Stéphane Lauzon (Argenteuil—La Petite-Nation, Lib.):** Thank you, Madam Chair.

I'd like to start by thanking the witnesses for providing us with a theoretical overview. It's clear from their thorough explanations just how passionate they are about the subject.

My question is for Mr. Bratt.

Mr. Bratt, you said in your statement that addressing the COVID-19 pandemic was a valid reason for the government to prorogue Parliament, but then you quickly went on to say what you felt was the reason the government chose to prorogue Parliament.

Can you explain why you think the government had a valid reason to prorogue Parliament in the midst of a pandemic?

[English]

**Dr. Duane Bratt:** I think something of this importance, which led to hundreds of billions of dollars in additional government spending for an unknown health pandemic that we didn't know how bad would be, would obviously justify a reset of government to prepare for something like that, just as a global financial crisis, a depression or a war would involve similar activities.

[Translation]

**Mr. Stéphane Lauzon:** You also said that it would have been better to prorogue Parliament in March, when we learned about the pandemic. Instead, the government prorogued in August. How would you have the government conduct a thorough analysis of the data collected between March and August, and all of the cases in the community? We knew at that point that there would be a second wave. The country was heading towards a \$300-billion-plus deficit. It was time to step back and take stock of the situation.

Why was it more important to prorogue in March than in August, when the government didn't have any data or evidence at that point? In August, we were truly facing an emergency. People were tired and fed up. They wanted to be done with the pandemic.

• (1135)

[English]

**Dr. Duane Bratt:** On the issue of timing I never said it had to be in March. It could have been April, May or June. I think the reason it occurred in August was that other political events like the WE scandal had emerged. It didn't need to be the first day, the second day or the first week. If it really was about COVID, if they felt they needed to do it in August they could have done it in June, in May. I think by doing it in August you need to look at the timing of the other events that were circulating at that moment.

[Translation]

**Mr. Stéphane Lauzon:** My next question is for both witnesses.

Both of you said that prorogation was controversial. In the country's history, has there ever been a prorogation that did not arouse controversy among the opposition parties?

**Mr. Patrick Taillon:** Certainly, but that's not entirely accurate: in a majority government, the use of prorogation is less controversial, because it does not tend to be used as a delay tactic, as may be the case in a minority government. Is Parliament seeking a confidence vote, an investigation?

In a majority Parliament, the government is in full control, or just about, of the House's proceedings. Prorogation in that context provides the government with an opportunity to reset its legislative agenda and deliver a throne speech. Although a minority government may prorogue Parliament for the same reasons, the decision tends to arouse more controversy and can be seen as a delay tactic. In a minority Parliament, prorogation is a tool the government can use to protect itself, since the confidence in the government is always more uncertain, if you will.

**Mr. Stéphane Lauzon:** You also said that the government could have done better, that all governments could have done better in every situation. Stephen Harper, who sought two prorogations, could have handled the situation better. The same is true of Jean Chrétien. One way to do better, you said, was to prorogue for a short period of time. You underscored that point.

Do you recall how long the two prorogations sought by the Harper government lasted?

**Mr. Patrick Taillon:** Unfortunately, I don't know the time frames off the top of my head, but I'm happy to concede that they may have been long. In 2008, prorogation lasted for a number of months, and accordingly, the controversy was considerable in that case.

I would even concede that proroguing Parliament over the summer months is not the same as doing so in the winter months.

**Mr. Stéphane Lauzon:** I was just getting to that.

**Mr. Patrick Taillon:** I have no problem agreeing on that point.

**Mr. Stéphane Lauzon:** It's one thing to compare the number of months, but it's another to compare circumstances when a prorogation occurs in the summer and Parliament returns at more or less the same time it would have. That makes a difference. It's wrong to claim that Parliament would have been hard at work during those six weeks.

You look at procedural issues from a highly theoretical standpoint, examining the differences between a prorogation, a throne speech and an economic statement. We are out there on the ground, however. We have our finger on the pulse of our communities, and it is our job to manage the situation and respond when seniors are in trouble, for example. Have you ever had occasion to do that?

[English]

**The Chair:** That's all the time we have, MP Lauzon.

[Translation]

**Mr. Stéphane Lauzon:** Thank you.

[English]

**The Chair:** Next we have Monsieur Therrien for six minutes.

• (1140)

[Translation]

**Mr. Alain Therrien (La Prairie, BQ):** Thank you, Mr. Bratt and Mr. Taillon. Your comments have been very informative. I have countless questions for you, but I'll try to keep them as clear and simple as possible.

Mr. Bratt, you emphasized that prorogation is an opportunity for the government to wipe the slate clean, to reset the agenda. You also said that, after you heard the throne speech, it was clear to you that it did not signal a significant change in direction. Rather, you saw it as more of the same. You listened to the Prime Minister deliver his address to the nation that evening; he told us all to cough into our elbows and to download the contact-tracing app. There was no new information there. You cast considerable doubt on the idea that the government wiped the slate clean to reset its agenda. Nevertheless, let's assume that's what the government meant to do.

Mr. Taillon, you said shutting down Parliament was like taking away the executive branch's toolbox. Given the crisis we were facing, the government denied us access to legislation that could have helped people cope with the circumstances.

Mr. Lauzon said that we weren't exactly working hard during the summer, but I would remind him that four committees were meeting and the House was sitting regularly. Back in March, the opposition parties began working together in a very co-operative way, agreeing to sit as often as possible in order to find solutions to address the pandemic. As the House leader of the Bloc Québécois, I lived it. I had many discussions with the government House Leader to try to come up with effective measures in the face of the extraordinary difficulty of navigating the crisis.

Parliament lost six weeks that it could have been working. If the government had wanted to reset the parliamentary agenda and not take crucial time away from the executive and legislative branches—time they could have been working together—the government would have prorogued Parliament on September 18, the Friday before it was scheduled to come back. On Tuesday, Mr. Booth and Mr. Sutherland told us that that was something the government could have done—and it would have had it been putting the interests of Canadians and Quebeckers ahead of the interests of the Liberal Party. The government, however, had other interests in mind, not those of Quebeckers or Canadians.

On August 17, Mr. Morneau, the government's second in command, resigned during the worst economic crisis since the 1930s. My question is straightforward. Would you say the prorogation of Parliament on August 18 was a move to save the skin of the guy at the top, the Prime Minister?

**Mr. Patrick Taillon:** Well, one thing is certain: the duration of the prorogation counts for a lot. I am the most critical of the government on that front. Governments can decide to prorogue Parliament for a combination of reasons, ranging from political and strategic to virtuous. In this case, the situation demanded that the government not close its legislative toolbox for such a long period of time. We were building the plane as we were flying it, to use a popular metaphor.

As it was, we were struggling to cope with the crisis with the tools we had. The powers of the provinces and the executive branch were still available, of course, but for the government to throw out the window tools at its disposal for six weeks is to put its interests ahead of the best interests of the federation.

I'll agree that, under normal circumstances, summer months matter less than winter months, but these aren't normal circumstances. That's why I'm focusing so much on how long Parliament was prorogued during a crisis. That was probably where the government went most wrong in this whole situation.

[English]

**Dr. Duane Bratt:** I would add a couple extra points.

Back in the 1980s, the Mulroney government had a one-day prorogation. You can do something like that. You can have a one-day or a two-day prorogation. He didn't need six weeks.

The timing is absolutely important. You cannot divorce Bill Morneau's resignation from his implication in WE. Think of that committee meeting when he announced that he had written a cheque to WE Charity for \$45,000 hours before testifying. That's pretty damning.

What happened after the prorogation? What was the coverage? It was about prorogation. It was less about Morneau's resignation for the ostensible reason of seeking this job at the OECD, which has quickly collapsed.



• (1145)

[*Translation*]

**Mr. Alain Therrien:** I want to underscore something: Mr. Morneau resigned on August 17 and Parliament was prorogued on August 18. Clearly, the decision wasn't motivated by the health or economic crisis. The purpose was simply to protect the Prime Minister's interests. Given what you've both told us, I am more convinced than ever.

I have a comment. As the House leader of the Bloc Québécois, I have been in regular contact with the government House Leader and the leaders of the other parties since March. All spring and summer long, we kept in contact to make the government's measures better, to build the plane as we were flying it, as Mr. Taillon put it. We set aside our political views and historical differences to work together so we could make people's lives better. Unfortunately, that's not what the Liberal Party did on August 18. It's shameful, if you ask me.

Now I'd like to revisit Mr. Trudeau's address the day the House returned.

[*English*]

**The Chair:** Thank you, Mr. Therrien.

Mr. Blaikie, you have six minutes.

[*Translation*]

**Mr. Daniel Blaikie (Elmwood—Transcona, NDP):** Thank you.

We are here today because of a policy adopted by the Liberal government in response to the prorogations sought by former prime minister Stephen Harper. My understanding is that the policy was meant to prevent controversial prorogations and hold the government to account when it decided to prorogue Parliament.

The committee has heard very different opinions as to why the government prorogued Parliament. This study matters to me, and my hope is that we will be able to understand the type of precedent this creates and thereby ensure future governments are less likely to abuse the power of prorogation.

We have repeatedly heard that all roads led to the Prime Minister. We are well aware that the prime minister is the one with the constitutional power to advise the governor general to prorogue Parliament. What we want to know are the reasons why that advice was given. We still haven't heard from the Prime Minister, himself, or had the opportunity to ask him questions.

Do you think the Prime Minister should appear before the committee as part of this study? Would that set a good precedent?

I'd like Mr. Taillon to answer first, followed by Mr. Bratt.

**Mr. Patrick Taillon:** If the committee invites the Prime Minister and he accepts the invitation, it would no doubt be a good thing.

You said that the prime minister had the constitutional power to advise Her Majesty's representative, the governor general. It's not quite that simple, though, because, the prime minister doesn't actually exist in our constitutional documents. His relationship with the governor general is governed by conventions, in other words, those unclear and unwritten rules that cannot be enforced by the courts.

That's the point I made at the end of my opening statement. It is indeed important to proceed cautiously, because our greatest asset—our parliamentary democracy—hinges on very delicate rules that can exacerbate a crisis, rather than help resolve it.

[*English*]

**Mr. Daniel Blaikie:** Monsieur Bratt.

**Dr. Duane Bratt:** There are a couple of things. One is that I'm very pleased this committee was formed to look at the August 2020 prorogation. I wish something similar had been done back in 2008 and 2010, when those occurred.

I like constitutional conventions. I think the unwritten constitution is a great strength of the Canadian system. Maybe that's why I'm not a law professor.

We can look at Boris Johnson. In the fall of 2019, the Supreme Court of Britain did overturn a prorogation, but he was then allowed to bring in a smaller, shorter prorogation. Given the similarities between the British system and the Canadian system and the role of convention, that might be a case to look at and to investigate much further. Maybe bring a British expert to the committee.

• (1150)

**Mr. Daniel Blaikie:** I think one of the things we've heard is that in the Canadian context, in order to change those conventions, you need a constitutional amendment. Even that strikes me as odd, because at that point you then have to write into the Constitution things that are not already there. It's not a simple case of amendment. It's actually developing a constitutional mechanism to govern prorogation.

As Monsieur Taillon said, you may be able to change these things because they aren't written and there is a fluidity to those rules, but you can do that only if the people in the positions of leadership—either the Prime Minister or the Governor General himself or herself—see fit to begin behaving in ways that don't conform to the established convention.

What are some of the paths for Parliament to assert a larger role in decisions about prorogation?

**Dr. Duane Bratt:** I agree that legislation would not work. I would argue that it would require something stronger than legislation. I think it is oversight. It is investigation into the actual reasons for prorogation.

Then let the Canadian people decide. Ultimately, they are going to be the jurors on whether this was politically motivated or motivated by public policy. That's where I would turn.

[*Translation*]

**Mr. Daniel Blaikie:** Mr. Taillon, would you care to comment?

**Mr. Patrick Taillon:** I would point to New Zealand and the United Kingdom, both of which developed cabinet manuals. The idea was not to change the conventional rules, but to at least codify them in writing, so that the public and parliamentarians could see and understand them.

That approach does not involve changing the Constitution; the manual merely provides guidance in the form of a non-legal document. We are talking about a manual that is agreed to across the board and debated before being approved. Accordingly, it serves as a beacon of sorts, helping to interpret these very important rules in the midst of a crisis.

The committee heard from my colleague Hugo Cyr, who made a case for strengthening the rules by holding a vote beforehand. Those are options you could adapt and fine-tune through the usual parliamentary procedure, including committees. Ultimately, though, Parliament's ability to undertake reforms is limited.

[English]

**The Chair:** Thank you, Professor.

We're going to move into the second round. Because we started a little late, I think we're going to go over a bit, but we'll end at the NDP in the middle of the second round.

Ms. Vecchio, go ahead. You have five minutes.

**Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC):** Thank you very much to our witnesses for coming today.

I want to turn back to some of the questions that my colleague John Nater was asking. I'm just going to start with a bit of a pre-amble, because, Dr. Bratt, you wrote in the Calgary Herald in September that:

The speech from the throne was not about a reset due to COVID-19. Rather, it was an elaborate effort from the Trudeau government to distract Canadians from a political scandal.

Do you still believe that's the case?

**Dr. Duane Bratt:** Yes.

**Mrs. Karen Vecchio:** Okay. Thanks very much.

Starting with that, I will quote from that once again, where you said that “the real reason for the prorogation was the WE scandal”.

Since we are tasked with reviewing the government's reasons for prorogation, does it make sense that this committee should hear from these types of witnesses?

**Dr. Duane Bratt:** Absolutely, and I would go back and revisit some of the testimony that had previously been done around the WE scandal with the Kielburger brothers. If you watched their interviews on the *The Fifth Estate* a couple of weeks ago, I think you might get very different testimony from what they delivered back in July.

**Mrs. Karen Vecchio:** You're absolutely right, Dr. Bratt. I have watched it and I totally agree. I paid attention to it, and you do see the story change and become a bit more open on some of the feedback on that.

In addition to the Kielburgers, are there any others? We've mentioned that the Prime Minister should be coming here.

Do Dr. Bratt and Professor Taillon agree that the Prime Minister should be here? Yes or no?

**Dr. Duane Bratt:** Yes.

**Mrs. Karen Vecchio:** Dr. Taillon?

**Dr. Duane Bratt:** I would agree, and Katie Telford as well, and many of the other same witnesses you had around WE.

**Mrs. Karen Vecchio:** We're looking at WE. Would you include Speakers' Spotlight and the people who organized the Speakers' Spotlight and have the information showing who was paid, which members of the Trudeau family were paid during this time with WE?

• (1155)

**Dr. Duane Bratt:** Yes. I think that's an important aspect. I don't think it's the only one. I mean—

**Mrs. Karen Vecchio:** Okay.

**Dr. Duane Bratt:** That was a big revelation when we found out that Justin Trudeau's mother and brother were being paid, but even before that, people had to have known—and should have known—about the very close connection between Trudeau and the WE Charity. I think it's less about the money than about how closely they were connected.

**Mrs. Karen Vecchio:** Absolutely, so as we're studying prorogation, it's not just about the Prime Minister and his final say, but we should probably investigate a little further. That's what I'm hearing from you, Dr. Bratt.

**Dr. Duane Bratt:** Yes, because, in my view, that's the reason for the prorogation. You're going to have to dig deeper into figuring out why they wanted to delay and change the channel.

Quite frankly, I think prorogation worked in that respect. It did change the channel. We've only been talking about WE in the last couple of weeks, but throughout the fall of 2020 it did move off the pages.

**Mrs. Karen Vecchio:** It sure did. I know that just the other day we heard from Pablo, who is our House leader for the government. The Liberals said they weren't filibustering, but we saw that in so many of our committees, the moment you brought up WE, everyone became a little bit prickly and did not want to go there again. They wanted to close that door.

I know that others have an idea that well, you know, that was months ago. Well, it's months ago, but unfortunately, I think it may be a pattern that we're seeing under this Prime Minister, and that's very concerning.

**Dr. Duane Bratt:** It might be tougher to do, but I would love to see Bill Morneau back.

**Mrs. Karen Vecchio:** Okay.

**Dr. Duane Bratt:** He is a private citizen now, but he resigned in between, so what was the link...? I would think a finance minister would love to be involved in dealing with resetting the Canadian economy and the finances after hundreds of billions of dollars of spending. This would not be the time to leave unless the Prime Minister had no confidence in you.

**Mrs. Karen Vecchio:** Absolutely. I think that we all saw that, unfortunately, on August 17. We saw that division of a very long-standing friendship that was gone.

We've continued to ask the Prime Minister; Katie Telford, the chief of staff; Mr. Morneau; Bardish Chagger and some other important people to testify. What should we do next if they do say no? Members of Parliament have the prerogative to say no. What should we be doing next?

**Dr. Duane Bratt:** I'm not sure what you can do to force them in there outside of identifying that they were requested and chose not to appear.

**Mrs. Karen Vecchio:** Okay. Is summoning the other witnesses a possibility?

**Dr. Duane Bratt:** Keep doing that. More information is better.

**Mrs. Karen Vecchio:** Okay. That's exactly what I want to look at.

Professor Taillon, do you believe it's also important to have the Kielburgers and other witnesses on here to show the link between prorogation and the scandal? What are your feelings on that?

[*Translation*]

**Mr. Patrick Taillon:** What happened with the WE Charity matters. Parliament would do well to see the investigation through. Members of Parliament have the tools to initiate a new investigation, if need be.

That said, I am not so sure it's necessary to redirect the committee's focus and turn a study on the reasons for prorogation into a second investigation. It's a better idea to follow up on the matter and undertake a proper investigation, as was done previously.

[*English*]

**Mrs. Karen Vecchio:** Thank you both very much.

**The Chair:** Mr. Turnbull, you have five minutes.

**Mr. Ryan Turnbull (Whitby, Lib.):** Thank you, Madam Chair, and thanks to both the witnesses for being here today and sharing your perspective. It's greatly appreciated.

Professor Bratt, I'll start with you. I want to ask you a point-blank question to get a short answer response if possible. Would you expect a government to abandon its values and priorities because of a pandemic?

**Dr. Duane Bratt:** No. Sometimes you are going to have to reverse course and do things in the general interest that may go against your ideology. I think we've seen that with a host of governments throughout the pandemic. I actually would argue that we've worked better together than we normally do in this country.

**Mr. Ryan Turnbull:** Thanks.

Wouldn't one then expect that a new Speech from the Throne would have some continuity or be largely similar in some respects to a previous Speech from the Throne?

**Dr. Duane Bratt:** It would, but this was not a normal Speech from the Throne. This was a Speech from the Throne—

**Mr. Ryan Turnbull:** Certainly not.

**Dr. Duane Bratt:** —that came on the heels of a prorogation, so mentioning things like child care, which is linked to the pandemic, and pharmacare, which can be linked to the pandemic, should have been linked in a much more explicit fashion.

• (1200)

**Mr. Ryan Turnbull:** Thank you. I appreciate that.

You've actually gone further to say, in your opening remarks, that the new Speech from the Throne didn't have "much substance". I'm quoting you. I have your written remarks here, so I circled that. I found that kind of strange from my perspective because I know how much extensive consultation went into formulating a new Speech from the Throne.

Have you done an analysis of the Speech from the Throne in comparison to the previous one?

**Dr. Duane Bratt:** I have not done that. I have listened to lots of Speeches from the Throne in the past.

**Mr. Ryan Turnbull:** Thank you.

I have and I just wanted to ask you if you were aware that the new Speech from the Throne had a focus on building back better. That wasn't even a part of the political lexicon, as far as I know, in terms of the key message prior to the pandemic.

Would you say that's true?

**Dr. Duane Bratt:** Putting in a phrase is not the same as developing a set of policy and policy ideas. Coming up with a catchphrase is not the same thing.

**Mr. Ryan Turnbull:** I see that as much more than a catchphrase, but you're free to disagree, of course.

What about the mention and the very significant section on system racism and addressing that? There's a very large section on addressing systemic racism, which is something that's definitely been highlighted in this throughout the pandemic. That was a new feature in the throne speech that wasn't in the previous one.

Would you say that's true? Would you acknowledge at least that was new?

**Dr. Duane Bratt:** That had been further developed than what we had seen in the previous throne speech.

**Mr. Ryan Turnbull:** Okay, so there were some new developments. Your claim about "not much substance"... What about the national standards for long-term care? To me this is something that's emerged as a major priority coming out of the pandemic and the failures that we've seen across the country in long-term care.

**Dr. Duane Bratt:** The problem with that, of course, is jurisdiction. Yes, talking about long-term care that is in the avenue of the provinces is also problematic, which is why there is a section in my statement—which I didn't read, but it was distributed—about why many of the premiers were also upset with the throne speech for other reasons.

**Mr. Ryan Turnbull:** I certainly recognize that there are jurisdictional challenges, but the point I'm trying to ask you about and make is just that it wasn't in the previous Speech from the Throne because the pandemic actually raised that issue.

In fact, there were—at least in my view—three or four major things in the Speech from the Throne that were not in the previous one that emerged as priorities as a result of the pandemic. The other one I would reference for you is the support for the hardest hit sectors, which is certainly something that was featured in that speech, among many other things.

From my perspective, the speech had a lot of substance to it. Perhaps maybe not from yours, but I think there's evidence to the contrary.

I want to ask you another question about timing. I think the other pointed remark that you made was really creating a causal link between two things that happened in time. I know from studying science and understanding that...timing doesn't necessarily create a causal link. Would you agree with that?

My daughter didn't do her homework last night doesn't mean that's the reason I woke up grumpy this morning.

**Dr. Duane Bratt:** Absolutely. It's all about the context of that timing and determining whether there's a causal link. I would think the resignation of the finance minister leading to prorogation the next day is a pretty good causal link.

**The Chair:** Thank you, Professor Bratt.

Mr. Therrien, you have two and a half minutes.

[*Translation*]

**Mr. Alain Therrien:** Thank you, Madam Chair.

It's quite clear that the prorogation sought by the government was politically motivated and tied to the WE Charity situation.

Mr. Turnbull, the honourable Liberal member, tried to tell us that the two throne speeches were different. Other than the part that involves interfering in an area of provincial jurisdiction—which all the provinces and Quebec came out against—I don't really see anything new.

I'd like to hear the views of the two witnesses, since they are both experts on the issue before us, but I don't want to put words in anyone's mouth.

Were there any significant differences in the new throne speech that would lead us to believe the government had a valid reason to prorogue Parliament? Is it clear from the throne speech that the government reset its agenda?

• (1205)

**Mr. Patrick Taillon:** It's necessary to differentiate between the content of the throne speech and the effect of the reset.

The government is claiming that it has taken a new direction. Has it? I don't have an opinion one way or the other. I will say that, ultimately, I don't think that's what matters. If the government wants to deliver a new throne speech, it can use prorogation to do that.

The effect of the prorogation is what really matters. Prorogation has the effect of ending all of the parliamentary proceedings that were under way and resetting the agenda.

It is possible to have a government that wants to deliver a new throne speech and chart a new course without proroguing Parliament. The government is under no obligation to prorogue Parliament in order to pursue a change in policies. That goes to the very essence of our system. Ours is not an imperative mandate system. Members of Parliament and the government are there to serve the public interest, and they are free to change direction when the circumstances warrant such a change.

As I see it, the effect of the government reset is really what matters most, what makes the biggest difference. Why is the government hitting the reset button? What measures does it choose to bring back? What measures does it oppose? What is it shutting the door on once Parliament resumes?

I think all of that matters a whole lot. Obviously, context plays a part. It's not always possible to point to a causal link, in this case, between an ongoing investigation and the decision to reset the agenda. One thing is certain: once the House has returned, if the government does not co-operate with efforts to see the investigation through, it may be a sign that the reset had the intended effect.

[*English*]

**The Chair:** Thank you, Professor.

Mr. Blaikie, you have two and a half minutes.

**Mr. Daniel Blaikie:** I want to come back to my initial question but maybe in a new way.

In 2015, we had a prime minister and a party that formed a new government that recognized the problem with abuses of prorogation. Their answer was to require a report to be filed after prorogation. I think we're seeing that this answer comes up short in some ways. It's better than what we had before, but it's not the gold standard.

In your view, in regard to a government that was really keenly determined to prevent future abuses of prorogation, what are some additional steps that such a government could have taken, and could take now, if they were really focused on the question of preventing abuse rather than talking about it after the fact?

Monsieur Taillon, and then Mr. Bratt if we have time left.

[*Translation*]

**Mr. Patrick Taillon:** The smallest—but most effective—change would be to put a time limit on prorogation in an effort to eventually establish a new use, a new convention. I don't have enough time to tell you about all the small, but sophisticated, reforms that could be made to the conventions. Nevertheless, putting a time limit on how long Parliament can be prorogued is probably the best way to ensure the government still has access to prorogation, while reducing potential harmful effects.

[*English*]

**Mr. Daniel Blaikie:** Mr. Bratt, do you have a quick reflection for us?

**Dr. Duane Bratt:** I would also say, this is not the first example, nor will it be the last, of an opposition party saying one thing and promising to do one thing, and then when in government, doing something different. We see this, and particularly the differences between being in a majority and a minority government. Had they been in a majority situation in July 2020, there would not have been as good committee work done as there was with a minority situation. I doubt that this committee itself would have been formed if there had been a majority government.

**Mr. Daniel Blaikie:** Thank you very much.

Madam Chair, I think that's pretty much it for my time, and I know we have some important business to discuss.

**The Chair:** Yes. Thank you so much.

I especially thank the witnesses today for being here and being so thoughtful and direct in your responses.

We will carry on now. You're free to sign off from today's meeting.

I'll have the rest of the members stay signed in to the public portion of the meeting because we have the election of the first vice-chair to take care of.

We'll have the clerk conduct that election.

• (1210)

**The Clerk of the Committee (Mr. Justin Vaive):** We'll proceed with the election of the first vice-chair. Pursuant to Standing Order

106(2), the first vice-chair must be a member of the official opposition.

I'm now prepared to receive motions for the first vice-chair.

Ms. Vecchio.

**Mrs. Karen Vecchio:** I'd like to put a motion forward to nominate John Nater.

**The Clerk:** It has been moved by Karen Vecchio that John Nater be elected as first vice-chair of the committee.

(Motion agreed to)

**The Clerk:** Mr. John Nater is duly elected first vice-chair of the committee.

Congratulations, Mr. Nater.

**The Chair:** Not that I had a vote, but I think I showed my cards there too.

Mr. Nater, welcome to the position. We're happy to have you.

Now if I could have you all log off and log in to the in camera portion of the meeting, hopefully we can get through the draft report.

Thank you.

[*Proceedings continue in camera*]

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