

Submission to the House of Commons Standing Committee on Procedure and House Affairs

Inquiry into Proposed Changes to the Standing Orders

June 24, 2019

Introduction and summary

The Samara Centre for Democracy is a nonpartisan charity dedicated to strengthening Canada's democracy. It produces innovative, action-oriented research into the challenges facing our democratic system and the reforms needed to make Canadian politics more accessible, responsive, and inclusive.

The Samara Centre for Democracy broadly supports the proposed changes to the House of Commons Standing Orders that were put forward by Frank Baylis, the Member of Parliament for Pierrefonds-Dollard, in private members' motion M-231 (also known as the "Democratic Empowerment Motion"). Together, the measures would help to decentralize power from parties to individual MPs, improve the representation of citizens' concerns, and strengthen scrutiny of the executive. In doing so, the proposed changes could also help build citizens' trust in their representatives and Parliament as an institution.

We would also note that the proposed changes to the Standing Orders contained in M-231 were developed through an inclusive process that featured participation by MPs and staff from four different parties. Such collaboration demonstrates that concerns with the operation of Parliament and Canada's political system transcend party lines. It also provides a model for future reform initiatives.

The remainder of the brief examines the five major reforms proposed by the motion.

1.0 Ending the use of party lists for speakers in debates

1.1 Context and research

Section (a) of the motion would explicitly prohibit the current informal practice whereby each party represented in the House provides the Speaker with lists indicating which of the party's members will speak in the House at a given point in time. Instead, individual MPs would need to rise in their places and be recognized by the Speaker to take part in debates.

While possibly making parliamentary proceedings slightly more efficient, individual MPs complain that the current practice of relying on lists of speakers allows party whips and leaders to limit their freedom to participate in debates and represent their constituents. Given this potential interference with MPs' capacity to independently intervene in parliamentary proceedings, the *Samara Centre agrees that lists submitted by parties should not be used to determine who can speak in Parliament, and we have previously made this recommendation in our research reports.*¹

¹ Samara Centre for Democracy, *No One is Listening: Incivility in the 42nd Parliament, and how to fix it* (Toronto: Samara Centre for Democracy, 2017).

Nonetheless, our research also finds that MPs were anxious about relaxing the use of party lists in all circumstances. Of the 100 Members who responded to our 2018 survey of MPs, 40% supported ending the use of party lists during question period while 33% were opposed.² However, just 20% supported ending the use of lists for members' statements (SO-31s), while 54% were opposed.

1.2 Commentary and recommendations

- The proposed amendments to Standing Order 17 contained in M-231 appear to strike the appropriate balance between MP independence and debate structure.
- While banning the use of party lists and requiring MPs to stand and be recognized by the Speaker in order to intervene in proceedings, the proposed provisions of 17(2) would still require the Speaker to give ministers and spokespeople the ability to make the initial comments in a particular debate, and would require relative partisan balance among the members taking part.
- Proposed Order 17(3) would also allow Members to apply for Members' Statements in advance, thereby reducing party control over those vital opportunities to speak while also allowing MPs to plan their contributions ahead of time.

2.0 The elimination of Friday sittings and reduction in vote times

2.1 Context and research

Section (b) of M-231 would eliminate Friday sittings in the main House of Commons chamber and revise a series of standing orders to account for the shift to a four-day parliamentary week. For instance, Standing Order 50(1) would be amended to make proportionate reductions in the number of days of debate on the speech from the throne, while Standing Order 81(10)(a) would be amended to reduce the number of supply days available to the opposition. The balance of the time lost would primarily be made up by the creation of a parallel chamber as described later in this brief. The change would allow the majority of their MPs to return to their constituencies on Thursday evening each week, allowing them to meet with constituents during the day on Friday.

MPs' work in their constituencies was a major focus in the Samara Centre's exit interviews with former MPs who departed parliament between 2006 and 2015. Three major conclusions of this study were that MPs continually feel overwhelmed by constituents' requests for assistance, that many townhall events are attended by the same set of stakeholders, and that attending community events (the so-called "Barbecue circuit") provided few opportunities for substantial policy discussions.³

2.2 Commentary and recommendations

- While fully recognizing the importance of constituency service, given the declining frequency with which the federal Parliament sits, the Samara Centre is cautious about proposals to increase the amount of time MPs spend away from Ottawa in their constituencies. That time will likely never be enough to respond to all requests they face, and frequently does not allow for meaningful engagement on policy issues with a broad range of citizens. It can also reduce MPs' capacity to perform their vital duties in the House of Commons or on committee.

² Samara Centre for Democracy, *The 2018 Member of Parliament Survey: Evaluating the House of Commons and Options for Reform* (Toronto: Samara Centre for Democracy, 2018).

³ Samara Centre for Democracy, *Beyond the Barbecue: Reimagining Constituency Work for Local Democratic Engagement* (Toronto: Samara Centre for Democracy, 2018).

- The Samara Centre would support the elimination of Friday sittings provided any hours lost are balanced with the increased availability of debating time through the creation of a parallel chamber.
- However, the Samara Centre would also encourage MPs to (1) develop new ways to engage all members of their communities in policy debates, and (2) to spend more time addressing the systemic issues that prevent their constituents from accessing government services rather than helping them on a case-by-case basis.
- In addition, while the proposed changes to the standing orders would be proportionate for the move to a four-day sitting week, serious consideration should be given to any potential reductions in opportunities for scrutiny.

3.0 Distribution of committee chairs across parties, election of committee chairs, and tenure for committee members

3.1 Context and research

Section (c) of M-231 would change the composition and operation of House of Commons standing committees by 1) dividing the committee chair positions across the recognized parties in proportion to their standing in the House of Commons; 2) requiring committee chairs to be elected by all members of the House of Commons; and 3) protecting tenure of those MPs serving on standing committees for the duration of a parliamentary setting.

These measures would largely imitate similar provisions that were enacted at the British House of Commons in 2010. Importantly, these reforms in the UK not only changed the operation of committees themselves, but reduced the tools available to parties to discipline their members, increasing members' autonomy.⁴

Samara's exit interviews with former MPs have found that the work of standing committees at the Canadian House of Commons has increasingly been undermined by limits imposed on members by their party leadership, and tensions between members of different parties. Former MPs who left the Canadian parliament between 2006 and 2011 described standing committees as one of the few places at Parliament where MPs occasionally put aside their partisanship and collaborated independently on policy issues.⁵ However, former MPs who left the House of Commons in 2015 argued that this was no longer the case, with parties increasingly directing MPs' interventions and participation in committees as well.⁶

3.2 Commentary and recommendations

- The Samara Centre strongly supports the proposals contained in section (c) and believes that together they would strengthen both the work of committees and the autonomy of private members.
- However, we have a number of suggestions to further strengthen the amendments proposed.

⁴ Meg Russell and Daniel Gover, *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law* (Oxford: Oxford University Press, 2017).

⁵ Alison Loat and Michael MacMillan, *Tragedy in the Commons: Former Members of Parliament Speak Out About Canada's Failing Democracy* (Toronto: Random House, 2014).

⁶ Samara Centre for Democracy, *Flip the Script: Reclaiming the Legislature to Reinvigorate Representative Democracy* (Toronto: Samara Centre for Democracy, 2018).

Preventing opposition critics from chairing standing committees

- As drafted, the proposed standing order 104.1(5)(a) would prevent the speaker, Deputy speaker, Assistant Deputy speakers, ministers, leaders of recognized parties, house officers, and parliamentary secretaries from serving as committee chairs.
- However, it would still be possible for an opposition critic or shadow minister to chair a committee, potentially resulting in its work being directed for partisan ends (or at least the perception thereof).
- By convention, opposition spokespeople are not members of the select committees in the UK House of Commons. This is especially true for members of the official opposition, and particularly with regards to committees that touch on the members' critic responsibilities.
- **Recommendation:** Proposed standing order 104.1(5)(a) should be revised using language from the British Standing Order that prevents opposition spokespeople from serving as members of the UK's Backbench Business Committee:

152J.(5) No Member who is a Minister of the Crown or parliamentary private secretary or a principal opposition front-bench spokesperson shall be eligible to be the chair or a member of the committee: the Speaker's decision shall be final on such matters.

Co-sponsorship of nomination papers for committee chairs by members of other parties

- Proposed standing order 104.1(8)(b) would require nominees for committee chair positions to have the support of at least 15 members of their own party.
- This provision is highly similar to Standing Order 122B(8)(b) at the British House of Commons which also requires nominees for select committee chairs to have 15 signatures from members of their own party.
- However, UK Standing Order 122B(8)(c) further also allows nomination papers to be signed by up to five members of other parties so that nominees can demonstrate their support across the House.
- Such co-sponsorship of nominees for committee chairs by members from multiple parties can help to build cross party consensus on candidates prior to the vote by the Commons.
- **Recommendation:** Any revisions to Canada's Standing Orders to allow elected committee chairs should include a provision allowing the cross-party sponsorship of nominees for committee chair positions modelled on UK Standing order 122B(8)(c).

Non-confidence in an elected committee chair

- Proposed standing order 104.1(21)(b)(iii) notes the potential to remove an elected chair from office through a motion of non-confidence.
- However, it is unclear what form such a non-confidence motion would take or how it would be moved.
- By comparison, the procedure for expressing non-confidence in an elected committee chair at the British House of Commons is set out in Standing Orders 122C(3) – 122C(5).
- **Recommendation:** Any revisions to Canada's Standing Orders to allow elected committee chairs should include clear rules on the form of a non-confidence motion in an elected chair and how it would be moved.

Securing tenure throughout an entire Parliament, not just a session

- Proposed standing order 114(5) would protect members of standing committees from being removed without the consent for the duration of a parliamentary session. However, such members could be removed when a session ends with a prorogation.
- While the 42nd Parliament was not prorogued, prorogation is nevertheless a tool available to the Executive. When it occurs, government and opposition party leaders could take advantage of the opportunity to remove dissenting MPs from committees. Protecting committee membership for an entire parliament instead of just for a session would increase the likelihood that members will act independently.
- In the United Kingdom, select committee chairs are elected at the start of each parliament and cannot be removed except through resignation or a motion of no confidence.
- Select Committee Members at the British House of Commons also typically serve for the duration of a parliament, with changes in committee membership requiring a motion from the Selection Committee that must be agreed through a vote by the whole House.
- **Recommendation:** the tenure of standing committee members be protected for the duration of an entire parliament, not just a session.

Protections against substitution

- It was not clear if proposed standing order 114(5) protecting MPs' tenure on standing committees would apply to instances when a member was not removed from a committee entirely, but a party chose to send an alternate member in their place for a particular meeting.
- **Recommendation:** any revisions to the standing orders to ensure members' tenure on a standing committee should ensure protections against involuntary substitutions as well, while permitting the flexibility to meet quorum and see the relevant parties represented.

4.0 Petition debates

4.1 Context and research

Part (e) of M-231 create provisions allowing those petitions that reach at least 70,000 signatures to be considered for a take-note debate in the parallel chamber.

The proposed measures would largely resemble recent reforms at the British Parliament that allow for petitions reaching 100,000 signatures to be considered for an adjournment-style debate in Westminster Hall, the British Parliament's own parallel chamber. The British petition system has attracted considerable public interest, with many petitions reaching the threshold for a debate.⁷ However, under the British system petitions reaching 100,000 signatures are not guaranteed a debate. Instead, the final decision to hold the debate with rests with a purpose-built Petitions Committee that ensures that the issues raised fall within the British Parliament's scope of action. The British Petitions Committee can also combine multiple or conflicting petitions into a single debate to ensure efficiency.

⁷ Molly Asher, Cristina Leston-Bandeira, and Viktoria Spaiser, "Do Parliamentary Debates of E-Petitions Enhance Public Engagement With Parliament? An Analysis of Twitter Conversations," *Policy & Internet* 11, no. 2 (2019): 149–71, <https://doi.org/10.1002/poi3.194>.

4.2 *Commentary and recommendations*

- The Samara Centre strongly supports the creation of a mechanism to allow debates on petitions.
- However, it was unclear why the proposed Standing Order 36.1(1)(a) would create a Subcommittee on Petitions within the Standing Committee on Procedure and House Affairs instead of establishing a full Standing Committee on Petitions with an elected chair.
- It was also unclear whether the provisions would allow the committee sufficient flexibility to schedule similar petitions into a single debate, as is the practice in the UK.
- The debates may also be more impactful if they followed the adjournment style, where a minister or parliamentary secretary must be present and respond, as compared to the take note style, where no ministerial presence is required.

5.0 *Creation of a second, parallel debating chamber*

5.1 *Commentary and recommendations*

Part (e) of M-231 would establish a parallel debating chamber at the House of Commons. The chamber, known provisionally as “The Hall” would sit Monday to Friday and provide members with additional opportunities to consider private members legislation, conduct adjournment debates, and a range of other activities.

As detailed in the Samara Centre’s brief the Committee’s study on parallel chambers, the Samara Centre for Democracy supports the creation of a parallel chamber that would allow backbench members more time to debate legislation, scrutinize the executive, and raise issues of concern to them and their constituents. Rather than repeat the research or recommendations made at that brief, we would note only that:

- The sitting schedule for the proposed chamber would be substantially longer than its counterparts in Australia or the UK. While not necessarily problematic, care will need to be taken to ensure that the operation of the Hall does not interfere with the operation of committees or the main House of Commons chamber.
- Rather than establishing the Hall as a separate sitting of the House of Commons, proposed Standing Order 160(1) specifies that it would be considered as a committee of the House. As such, we were unsure if there may be any legal provisions that would prohibit second and third reading debates from being conducted there as compared to the main House of Commons chamber.