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Commons of the Standing Committee on
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Thursday, March 5, 2009

—
Chair

Mr. Scott Reid

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•(1115)

[English]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): We're in public now.

As was pointed out to me by the clerk, this subcommittee has not dealt with procedures that it would adopt—or bylaws, or ways of operating. I chair another subcommittee, the subcommittee on human rights of the foreign affairs committee, and at that subcommittee it had been the practice to adopt rules, such as how to deal with witnesses, times of speaking, and so on. May I assume that the members of the committee want to stick with essentially operating with just the rules that bind our parent committee rather than trying to adopt our own? Is that a general agreement?

Madam Jennings, please.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): In the past, has a subcommittee of Procedure and House Affairs simply used the rules of the committee of the whole? If that's the case, then yes, let's just continue in the tradition.

The Chair: The answer is that all the ones I've been involved with have done that.

Is it the general consensus to just follow what the parent committee does?

Some hon. members: Agreed.

The Chair: Okay.

The second matter I want to deal with is in regard to material. We will receive some material. Some of it will be presented to us confidentially, one would assume, and it would be appropriate to keep that in camera. But my preference is very much, where possible, to have any items treated as public documents. The public has a right to know what we are doing whenever some kind of confidentiality is not requested by, for example, the commissioner when she submits materials to us. I would like to make items, where possible, public, starting with the submission Madam Dawson has given us. By referring to it right now, I'm effectively making it a public document. I'd like to treat things that way, unless there's any reason for confidentiality, in which case we'll treat them as confidential documents.

The next item I want to deal with is the question of dealing with any witnesses we have. We're likely to have only one witness, I expect, and that is the commissioner, but that could change.

This committee is different from any previous committee I've been on in that there is no government member other than me, the chairman. Members will be aware that I was opposed to this committee structure, because it would make it impossible for a government member to deal with witnesses, or to vote, should there be any disagreement. Therefore, I am going to propose, in dealing with our witnesses, an order for questioning. This is something we can't simply cross from the parent committee, because that has a different structure. There are more members on that committee. The order would be simply that we start with the official opposition. We then go to the next largest party, the Bloc Québécois. We then go to the New Democrats. I will reserve the right to ask questions as the final questioner.

I'm hoping to do this by consensus. We've had consensus on other subcommittees on similar matters. We dealt with the code of ethics for MPs entirely by consensus. We had no votes at all, and I was very pleased with that. I would like, where possible, to continue that approach. If there's a need for voting, I will just alert members of the committee to the fact that I will exercise my right to vote and will not regard the fact that I hold the chair as making me ineligible to vote. That's not something I will regard as being subject to challenge, although if anybody finds that objectionable, they will have the option of voting non-confidence.

Go ahead, Madam Jennings, please.

Hon. Marlene Jennings: I have no objection, clearly, to you participating in the questioning of witnesses. That is the practice on all committees I have sat on, whether it's been a subcommittee or a committee of the whole. The chair has, from time to time, sometimes very regularly, sometimes sporadically or very exceptionally, reserved some time to ask questions and clarify issues. So I have no problem.

I would suggest that if we're allotting time, because that's part of our rules—the first round is x amount of time, and so on—that we empower the clerk to keep an eye on the timer and signal when our time is up, the same way you do with the members here.

In terms of voting, normally the chair does not vote, and unless the clerk tells me that on subcommittees of Procedure and House Affairs the tradition has been that the chair has voted, then I'm not interested in having the chair vote.

The Chair: Well here you have a problem, Madam Jennings. Hopefully, if it is done by consensus, we won't have to have any votes. The reason I wanted this out of camera was so it would be on the record. If there's a need for a vote—and you were the strongest advocate of making sure that no government member be present on the committee, except for the chair—

Hon. Marlene Jennings: That's correct.

The Chair: —and given the fact that we adopted that practice, I will be voting. I will not accept challenges to my right to vote, and if you want to challenge me, you'll have to do so by effectively voting non-confidence in me and removing me from the chair. Then maybe you can find someone who's more inclined in that regard. But that is how I'm going to handle it.

Hon. Marlene Jennings: Chair, you cannot unilaterally change the rules. As I've just asked, can the clerk confirm whether or not, in previous subcommittees of this Standing Committee on Procedure and House Affairs, the chair has in fact—and that's regardless of which party was the governing party and therefore occupying the positions of chair of the subcommittee...? Is it the practice that the chair votes?

I'm asking the clerk now. The clerk is the person who knows the rules.

The Chair: Madam Charlton will have the floor next—

Hon. Marlene Jennings: May I have an answer?

The Chair: Yes, you will, and then it will be Madame DeBellefeuille.

You've been asked a question. You should feel free to respond.

The Clerk of the Committee (Mr. James M. Latimer): In the House of Commons committees and subcommittees, the chair only votes in the case of a tie.

Hon. Marlene Jennings: Thank you.

The Chair: That's correct. Just before we go to the next member, I think I'll advise Madam Jennings that I will be voting unless there is a vote of non-confidence in me, removing me from the chair, at which point you can choose someone else you might find more compliant. That's why I asked to be a member of this committee: to ensure that the undemocratic procedure you chose to adopt would not be allowed to stand.

Madam Charlton, you have the floor.

Hon. Marlene Jennings: Excuse me. I would like my name to be on the list where we have an ongoing discussion, so when my turn comes up—

The Chair: It is on the list.

Hon. Marlene Jennings: Thank you.

The Chair: Madam Charlton.

Ms. Chris Charlton (Hamilton Mountain, NDP): I guess I'm a little troubled by how we're starting our proceedings here on the subcommittee. I've been on the subcommittee for a while now. The chair is right, although I don't believe it's right that we decided all things unanimously—I do recall having votes.

The Chair: I stand corrected. I apologize. I actually don't recall that, but I accept your correction.

Ms. Chris Charlton: Nonetheless, it's been a fairly collegial committee and I think it's been a non-partisan committee. I'm not sure why you would start a new sitting of this committee raising this as an issue. You know—and in fact your introductory comments made it quite clear that you're aware of the fact—that chairs don't cast ballots unless it's a tie vote on a committee.

I don't understand why you think this is something we need to be debating at great length today. I certainly don't come at this from a partisan perspective. As you know, not all committees nor all subcommittees are chaired by government members. For me, at least, this is not a partisan issue in the least. But frankly, I don't feel empowered as a committee member to give you the right to be the exception to the normal procedures of the House. I'm a little startled by the fact that you think you have the right to assume those powers for yourself.

I can certainly appreciate that you weren't happy with votes that constructed the subcommittee in the way that we now come together. Nonetheless, that doesn't change the role of the chair, nor, in my view, either the rights or the obligations of the chair for this committee. I actually agree with Madam Jennings and the position she's taking on this.

● (1120)

The Chair: Thank you.

Madam DeBellefeuille, please.

[Translation]

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): Thank you.

I am a little surprised, Mr. Chair. I came here to work today and was anxious to get on with it.

[English]

Ms. Chris Charlton: I'm sorry to interrupt. I don't have any...

[Translation]

Mrs. Claude DeBellefeuille: I think that the translation is haunted over on this side.

[English]

Ms. Chris Charlton: Really, I'm sorry. I just don't want Madam Jennings to have to translate.

[Translation]

Mrs. Claude DeBellefeuille: We should change rooms. This one is haunted.

Hon. Marlene Jennings: It is still over on this side. We are going to start suspecting a plot.

The Chair: It is working now.

Mrs. Claude DeBellefeuille: I am a little shocked. This morning, I was really positive and looking forward to tackling this subject. After all, it is not a political issue. No party should have any interest in using it in a partisan way because it affects members from all parties and every one of them wants the policy on conflict of interest for members of the House of Commons to be as fair and as reasonable as possible.

I am also shocked that you are banging heads with us, and I think the expression is warranted in the light of your loud and forceful statements that you are going to vote, come what may, in spite of the clerk telling you that chairs do not normally vote. I have only sat on this committee for a short while but I know that you are a lawyer, a man of the law. You often refer to the Constitution and you seem to be familiar with all the rules. So I am surprised that you want to make an exception.

The task before us is a collegial one. I can tell you that you have our cooperation on this committee and I do not think that we will have to vote. Our subcommittee has to submit a report to the Committee on Procedure, where it will be voted on and debated again. So no one can say that you will not be able to express your opinion or record your vote; you will have ample time to debate these matters, and to vote, if need be, at the Committee on Procedure.

Mr. Chair, I do not know you very well. Be that as it may, I propose that we agree to work with an attitude of openness and to begin our work as quickly as we can. It would be very nice to respond to the commissioner's request and to start our work immediately.

[English]

The Chair: Madam Jennings now has the floor.

[Translation]

Hon. Marlene Jennings: Not only do I support what Mrs. DeBellefeuille and Ms. Charlton have said, but I find it really distressing that, flagrantly disregarding the vote that was democratically held at the Standing Committee on Procedure and House Affairs, you should make the autocratic announcement that you have no intention of complying with the decision of that vote. I support what Mrs. DeBellefeuille said. I have never sat on a subcommittee of this committee, but I have sat on other subcommittees, and, in 95% of the cases, maybe even 99.99%, subcommittees work by consensus. The chair's point of view has always been considered, the chair has always guided the work and participated in all discussions.

I fully understand why you decided that our session should be public. I have no objection, but I would like everyone watching this session to understand clearly that this matter was debated at the Committee on Procedure and House Affairs, our parent committee, that is. A majority of members decided that there would not be two members of the Conservative Party of Canada, that a member of the Conservative Party would chair the committee, that there would be one member of each of the other political parties, and that the rules of the subcommittee would be the same as the rules of the parent committee.

● (1125)

[English]

I would ask the chair, very respectfully, to withdraw his statement, to allow our subcommittee to begin its work. Should we ever come to a point where we need to take a vote, and if at that point the chair feels it is essential, then I would suggest we bring it back to the committee of the whole.

As Madame DeBellefeuille stated, it's the committee of the whole of Procedure and House Affairs that makes the ultimate decisions. We only make recommendations to the committee of the whole. Any decision that's made here has to be supported and confirmed in the committee of the whole.

I find this very surprising, because you are someone who has always pushed democracy. Well, democracy did speak, and to make a unilateral declaration that regardless of the decision of the committee of the whole, should there be a vote here, you intend to cast your vote in flagrant violation of a democratically voted decision, is surprising, and it saddens me, Mr. Chair.

The Chair: Madam Charlton, please.

Ms. Chris Charlton: I don't really want to belabour this discussion. I think we all understand where we are on this issue now.

I don't recall, although I may be wrong, that I've participated in a subcommittee in anything other than an in camera discussion. If that is the case, it's my understanding we don't record or publicize our votes, in any event.

So much like Madam Jennings has suggested, maybe you could think about some of the comments that we've made this morning. It gives us an opportunity to think further about yours as well. The agenda today was certainly intended to be in camera, so there are no votes coming out of this that will be publicized. And perhaps we can just take some time, reflect on this, and if it does become urgent, by all means, let's revisit it.

For you to suggest that we need to start this first meeting by passing a motion of non-confidence, to me, draws a line in the sand that I don't think we need to cross, and it doesn't particularly start us off well in a committee that's worked consensually all this time.

The Chair: I don't have anybody else on the speakers' list.

I want to make a comment here. This may provoke further comment, in which case, we'll add to the speakers list. If not, we'll go back in camera.

Just as a general response to the comments made here, the point of raising this at the beginning of the meeting, of course, is so that I don't spring any surprises on people by suddenly announcing that I'm going to vote without having given prior notification of that. So there was no means to respond to your question or your point, Madam Charlton. There was no ability, on my part, to indicate this intention without doing so at the beginning of the meeting.

Your point about being in camera for most meetings is entirely correct. The closest approximation I can think of to this subcommittee was the one dealing with the ethics code, which I chaired. But we can't guarantee that will always be the case. So that's a concern that is partly valid on your part, but I think it's not guaranteed to be the case.

The other subcommittee I chair, the human rights subcommittee, does meet mostly in public, although partly in private. So the possibility exists that we'll be meeting out of camera.

Now I'm turning to Madam Jennings' point, the point with regard to this being, in some respect, an anti-democratic action on my part.

I'll just make the observation that denying somebody a vote is anti-democratic. Allowing them to vote is democratic. There are times when not being democratic is the appropriate thing to do. There are lots of cases where being undemocratic is appropriate. Our courts don't operate as democracies. They don't seek to give the majority's opinion. They seek to rule correctly on the law.

But the decision to deprive one party of a vote was a decision to act undemocratically that I thought was unjustified. I don't need to reprise the arguments I gave in the main committee on this subject. As a matter of accuracy in our semantics, democracy is where people can vote, not where they're deprived of a vote.

This problem could have been resolved by allowing a government member to sit on the subcommittee.

Madam Jennings is on the order. I'll just finish my comments and then I'll give her the floor.

So I presented the subcommittee with an alternative, and I did it up front in order that the option is available to you. You do have the option of removing me as chair, which would then allow you to seek someone else who might be more compliant in the anti-democratic way in which this committee has been structured. It's not my intention to bring things to a vote so they can't be avoided. It's not within my power, obviously, as one member of a four-member committee, to overrule a majority on the committee. But it's also not within my power to indicate dissent from decisions that I don't agree with. I don't necessarily think there will be very many decisions that I would be inclined to disagree with. This is a group of sensible people. Once I've been deprived of the vote, and therefore the party I represent, the government party, is deprived of any voice on this committee, and there is something, I believe, fundamentally wrong with that.

As a note, there are other chairs of four-member subcommittees, so I'm told—I haven't confirmed this—who have in fact, within the life of this Parliament, indicated that they would be voting and who have voted. So this is not without precedent, although it hasn't been done on a subcommittee of this committee.

So those are just some important points, I think.

I see that my comments have prompted some additional desires for commentary.

Madam Jennings is first and Madame DeBellefeuille is second.

• (1130)

Hon. Marlene Jennings: Yes, I would like to inform anyone who is watching this session that when the chair said he had some business items and therefore would not go in camera, I did not object, and I know my two colleagues, Madame DeBellefeuille and Ms. Charlton, also did not object. But again, we had no idea that the chair was going to attempt to revisit, in an autocratic fashion, a decision on a rule that was made in the committee of the whole of Procedure and House Affairs, which follows the tradition not just of Parliament but of many organizations—non-governmental organizations, commercial entities with boards of directors and executive committees—that the chair does not vote unless it's to break a tie. Those are all democratic, and it was decided upon democratically.

I would suggest again, and I echo my colleagues sitting on either side of me, that we move on and go back in camera, begin the actual work that we came here to look at, as mandated by the committee of the whole of Procedure and House Affairs. Should the issue of voting actually become an issue, then we can suspend our work and bring it back to the committee of the whole and have the committee of the whole make a decision again. At that point, should we come back and should the chair again decide that he does not wish to respect the decision of the committee of the whole, then we will look at our options. But I would suggest that we end this now. I believe everyone has made their views quite clear.

Madame DeBellefeuille, Ms. Charlton, and I have expressed several times the desire to begin the actual work of the committee. So I would urge the chair...in fact, I move that we end this discussion, go to the work that we were delegated to work on, and go back in camera so that we can begin considering the conflict of interest code for parliamentarians and the issue of gifts.

• (1135)

The Chair: I believe, actually, such a motion is out of order while other members are still on the floor. They may wish to surrender their spots, but both Madame DeBellefeuille and Ms. Charlton are on the speaking order.

Madame DeBellefeuille, you're next.

[*Translation*]

Mrs. Claude DeBellefeuille: Mr. Chair, I am extremely surprised and disappointed at the amount of time we are spending on a debate that has already taken place at the Committee on Procedure, where you had the democratic opportunity to make your opinion fully known. Despite the vote that did not go your way, you still agreed to chair our group. I find bringing up the debate again today to be totally unacceptable.

Many things are passed in the House these days that I do not agree with, pay equity among them, but the Conservatives and the Liberals have come to a democratic agreement to pass things that I find unacceptable. That is democracy at work. I used my right to vote to express my opposition. You had your chance, and, when we are finished, our report will be debated again at the Committee on Procedure.

I am extremely disappointed that we are wasting members' time and taxpayers' money on a debate that has already taken place. I have no intention to ask you to resign. Quite the opposite, I am asking you be open and to work as a team with the three women here to represent the opposition parties. We have been telling you for some time that we are open. We want to get down to work. You are now creating a climate that does not lend itself to cordial debate.

I am asking you for the last time; end this discussion so that we can study what the commissioner is asking us to study. The voters and taxpayers ask us to use our valuable time in order to serve them. I would like you to do that immediately.

[*English*]

The Chair: Madam Charlton, you have the floor.

Ms. Chris Charlton: Let me see if I can be helpful here. As the self-described champion of the democratic process, you have proposed that you be able to vote. So why don't we have a vote in this committee about whether the chair should be allowed to vote? That is the ultimate democratic process. If you feel that the vote needs to happen again to reaffirm whether the chair does or does not have the right to vote, that is the democratic way to do it: let's have a vote.

Let's end the debate; let's get on with dealing with the item that is on our agenda today. I think we owe it to the people who are watching here today, if they are—and I hope most of them have turned us off by now, because it's absurd....

The Chair: They'd be listening to the audio. There's no television today.

Ms. Chris Charlton: If you believe the way to end these things is democratically, as you suggested at the outset, then let's have a vote on this and get on with the business of the committee.

The Chair: Such a vote would in practice be a vote of confidence on my chairmanship. If you seek to do that, you'd be holding a vote on my chairmanship, and I would have to resign the chairmanship at the end of it—which I'm prepared to do; that's why I gave you the option at the beginning.

As I say, it's not my intention to try to provoke votes, but it is my intention to exercise a vote, should one arise, as a way of allowing the government side to have a vote in these matters and not be undemocratically excluded from voting in this subcommittee.

I leave that as a comment. We can go back in camera or we can pursue further matters, if there's a desire on the part of committee members. I simply alert members to either option.

I'm not seeing anything, so I'm going to assume we're going back in camera.

[Proceedings continue in camera]

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