

# Standing Committee on Procedure and House Affairs

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Tuesday, November 29, 2011

Chair

Mr. Joe Preston

# Standing Committee on Procedure and House Affairs

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**●** (1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): We'll call this to order. We are here today, pursuant to the order of reference of Thursday, November 3, 2011, on Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act.

We're in public doing clause-by-clause on this bill.

Mr. David Christopherson (Hamilton Centre, NDP): I have a point of order.

**The Chair:** Mr. Christopherson, on a point of order. **Mr. David Christopherson:** Thank you, Chair.

We're receiving submissions; they're in front of me now. I think we got them yesterday. I understand these just came in recently and they had to be translated. Where I'm going with this, Mr. Chair, is questioning how we are in a situation where important input in terms of submissions is coming at a point where it's all but impossible to take anything they say into account, when we're at the stage to actually deal with the bill clause by clause.

I'm raising it as a concern, seeking your thoughts on...anything about it. Obviously, it's not good that we're getting this now, when it could have impacted on our thinking. It's a bit late.

**The Chair:** All I can suggest, Mr. Christopherson, is that we had our timeline fairly solid. We asked everyone to respond in our timeline. There are many that haven't responded at all, so we can only assume they want not to respond. Some responded late.

That's the best I can offer you, that they were all given our timelines and how this was to flow.

**Mr. David Christopherson:** Mr. Chair, just for clarification, were they given a timeline suggesting that if you don't make it by such and such a date, it's really not going to be able to impact on the process? Were you able to go that far with them?

The Chair: I did not speak to these people; the clerk did on our behalf. The analysts and I have met on this. There have certainly been some follow-up e-mails that took place as late as last week to ask, "Are you going to send us anything?" So I can only suggest yes.

If you'd like to respond to it, you may.

The Clerk of the Committee (Ms. Michelle Tittley): When I solicited briefs on behalf of the committee, the e-mail indicated that the briefs should be submitted as soon as possible. When I did some follow-up calls with the provinces, as was discussed at the last meeting, I indicated that the date the committee was planning to

proceed to clause-by-clause was today. The original e-mails I sent out did not include a date because the date for clause-by-clause had not been officially determined at that point, and that's why I used the caveat "as soon as possible".

**Mr. David Christopherson:** I have one more question, Chair. Did any of the provinces or territories respond?

**The Chair:** Not that I know of.

The Clerk: I did have a phone call this morning from one of the provinces asking whether or not it was too late to submit something at this point. I indicated that the committee was planning to do clause-by-clause today, unsure if the committee would finish it today or at their next meeting. But I also indicated that even if the committee process at this level were completed, there would likely be other opportunities to provide feedback through the other stages of the legislative process.

**Mr. David Christopherson:** Could I ask what province that was, please?

The Clerk: That was Nova Scotia.

Mr. David Christopherson: Thank you.

Okay. It's disappointing, but thanks for the explanation, Chair. I appreciate it.

**The Chair:** We have two witnesses with us today from the Privy Council Office: David Anderson and Jean-François Morin. Thank you for coming today and helping us with this. If you will bear with me, this is my first clause-by-clause as the chair, so we're going to get through this as smoothly as possible.

Pursuant to Standing Order 75(1), consideration of the preamble and clause 1 is postponed. We'll call for clause 2.

(On clause 2)

The Chair: Under clause 2 we have a Liberal amendment, LIB-1.

Mr. Garneau

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chairman.

Of course, as you know by now, the Liberal position is that we should be attempting, in reviewing this situation.... In the interest of making changes that are cost-conscious as well as breaking the cycle of continuously adding more seats every ten years, we have made a number of statements. The amendments we propose here back up those statements.

What we've proposed is a way of staying at 308. We think this is in the interest of the country. We think this is an opportune time, with a majority government, to make that big change. As a result, amendment LIB-1, as you can see from reading it, is a change from the current legislation, essentially talking about establishing the quotient at 308. I believe all of the members understand what's being said in that amendment.

**●** (1110)

The Chair: Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Maybe I'm misunderstanding something. It says here, "Bill C-20, in clause 2, be amended by replacing lines 4 and 5 on page 3", but aren't lines 4 and 5 in clause 1 rather than clause 2?

A voice: It's rule 1 of clause 2.

Mr. Scott Reid: My apologies, I'm... No, I think I'm right here.

**The Chair:** I'm looking at clause 2.

Mr. Scott Reid: It's page 3 of the draft bill, right?

The Chair: Yes.

It's rule 1 in clause 2. Well, it's in 51(1)1.

Mr. Scott Reid: Okay, I see what's going on. My apologies.

The Chair: Further comment on LIB-1?

Seeing none, I'll call for the vote.

(Amendment negatived)

The Chair: On LIB-2?

Mr. Marc Garneau: Thank you.

Mr. John Williamson (New Brunswick Southwest, CPC): I've got a question. Is this in camera or is this a...?

The Chair: It's public.

Mr. John Williamson: It is public, okay.

This is the bill and these are the amendments. Is that right? A bush league question, I know, but—

The Chair: Sorry, I can't tell what you're holding up, but I'll say

**Mr. John Williamson:** One is the bill, with the staples, and these are the amendments.

**The Chair:** The others are the amendments. **Mr. John Williamson:** Thanks, everyone.

The Chair: You're very welcome.

On LIB-2.

**Mr. Marc Garneau:** Amendment 2 is actually reintroducing something that was used back in the fifties, when the time came to reconsider redistribution. It's a rule that was used back then that says that any time you do make the change, you don't make a change that would exceed 15%, of what it was before.

We think this is a reasonable way of addressing the fact that population changes can sometimes be rather swift in a 10-year period. This was in fact on the books back in the fifties.

The Chair: Is there any further discussion on LIB-2?

Seeing none, I'll call the question.

(Amendment negatived)

The Chair: On LIB-3.

**Mr. Marc Garneau:** LIB-3 makes a change that recognizes the fact that what we should be doing is talking about the total number of members assigned, not only to the provinces but to the territories. So instead of being based on 305, it should be based on 308, and it should be based on the population of Canada, meaning provinces and territories.

That's the small wrinkle in rule number 3. **The Chair:** Further discussion on LIB-3?

Seeing none, I'll call the question.

(Amendment negatived)

The Chair: That brings us to NDP-2.

You get to move it first, David.

**Mr. David Christopherson:** Yes, Chair, I would move that Bill C-20, in clause 2, be amended by adding after line 31, on page 3, the following:

3.1. The proportion of members from the Province of Quebec in the House of Commons must remain unchanged from the representation that it had on November 27, 2006, when the motion was adopted in the House of Commons recognizing that the Québecois form a nation within a united Canada.

If I may speak to it...?

The Chair: No.

Bill C-20 amends the Constitution Act of 1967, modifying the rules for calculating the province's representation in the House. The amendment attempts to exempt the Province of Quebec from the proposed rules.

The *House of Commons Procedure and Practice*, second edition, states, on page 766:

An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the introduction of this exemption for the rules for Quebec is a new concept that's beyond the scope of this bill.

(1115)

**Mr. David Christopherson:** Okay. I wasn't quite prepared for that. Could you please read that again, Chair?

The Chair: Certainly.

It says:

An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope....

By exempting Quebec from this ruling, you're beyond the scope of this bill. You're exempting Quebec from this legislation.

Mr. David Christopherson: So you're ruling it out of order?

The Chair: Yes, because it's beyond the scope.

Mr. David Christopherson: What are my appeal options?

The Chair: I suppose you could challenge the chair's ruling.

Mr. David Christopherson: I know where that will get me. I can count that far.

Some hon. members: Oh, oh!

An hon. member: Go ahead and do it anyway.

**Mr. David Christopherson:** Yes, I guess I should anyway, just for the formality of it.

I'm sorry, and with the greatest of respect, Chair, and please do not take it personally, you understand...?

The Chair: I do not, of course.

**Mr. David Christopherson:** I want to be very clear that it's about the dynamics of the issue and not you at all. However, I do find it necessary to challenge the chair.

The Chair: Okay.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Regardless of what you've said, I think you've hurt his only feeling.

Some hon. members: Oh, oh!

The Chair: You're assuming a feeling.

We must rule on whether we're sustaining the chair's ruling. We will vote on that.

A voice: A recorded vote?

**The Chair:** A recorded vote, I suppose.

**Mr. Greg Kerr (West Nova, CPC):** We're voting as to whether we're in favour of your decision or not?

The Chair: Yes.

The Clerk: That the decision of the chair be sustained.

Mr. Greg Kerr: Thank you.

The Chair: Those in favour of that motion?

**Mr. Marc Garneau:** At the risk of sounding slow, may I ask for one more reading, please?

**The Chair:** Certainly. Bill C-20 amends the Constitution Act—that's what it's for—by modifying the rules for calculating the provincial representation in the House. The amendment attempts to exempt the Province of Quebec from these proposed rules.

As the *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the introduction of an exemption for the rules for Quebec is a new concept that is beyond the scope of Bill C-20 and is therefore inadmissible.

Will you be voting in favour of this?

Mr. Marc Garneau: [Inaudible—Editor]

The Chair: All right.

(Ruling of the chair sustained [See Minutes of Proceedings])

**The Chair:** NDP-2 is beyond the scope, so we have no reason to vote on it.

That moves us to Liberal-4.

**Mr. Marc Garneau:** Liberal-4, Mr. Chair, is like Liberal-3, in that it includes the territories and calculations are based on the total population of Canada. It's much the same as Liberal-3.

The Chair: Is there further discussion on Liberal-4?

(Amendment negatived)

The Chair: That moves us to Liberal-5.

I'd ask you to move that.

Mr. Marc Garneau: Yes. Mr. Chair.

We realize that in the readjustment of the seat distribution, when we keep the number at 308 there are provinces that have increased—Ontario, Alberta, and British Columbia, obviously—and others that have not increased proportionally to those provinces. This is a way of providing a gradual change. In other words, we don't lower provinces that have decreased their population proportion disproportionately; we do it gradually. At the same time, we only gradually bring up those provinces that have increased their population. In fact, if you compare our numbers in terms of proportion, they're the same as those being proposed in Bill C-20.

**The Chair:** Well, Mr. Garneau, you are probably not going to like that Bill C-20 amends the Constitution Act 1867 to amend the rules for readjusting the number of members in the House of Commons. This amendment proposes to amend these rules so as to keep the number of members as its current level.

As the *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, an amendment to maintain the current numbers of the members in the House of Commons is contrary to the principle of Bill C-20 and therefore is inadmissible.

• (1120

**Mr. Marc Garneau:** I'd like to bring up a point of order. Is this a new procedure where the chair is allowed, without any warning whatsoever, to come in and make this kind of a ruling?

**The Chair:** I think chairs can make rulings on whether amendments are accessible. That's our job.

Mr. Marc Garneau: At the very last second?

**The Chair:** It only seems like the last second because I've just done it. If I did it five minutes from now, it would be later. I don't know what you're suggesting. We have to wait for the meeting.

Mr. Marc Garneau: Very good. Thank you, sir.

I would just like to point out that with this rule here, this fifth rule, we are actually achieving exactly the same proportions that are being achieved—

Mr. Dave MacKenzie (Oxford, CPC): On a point of order, Chair, it's not debatable.

**Mr. Marc Garneau:** I'm not debating it. I'm just making an observation that the proportions—

Mr. Dave MacKenzie: It sure sounds like debate.

**Mr. Marc Garneau:** You don't have to respond to it, Mr. Chair. I would like to make the point that the same proportion is achieved through this formula, keeping the total number of seats at 308, as with Bill C-20, which increases the number of seats by thirty.

The Chair: As is pointed out, it's not debatable. If you'd like to challenge the chair's ruling, that of course is your only method for this

Mr. Marc Garneau: I will challenge it.

Mr. David Christopherson: I wish you better luck than I had.

An hon. member: But with respect, though.

**Mr. Marc Garneau:** With respect always. And I don't think I need too much of a crystal ball to predict the outcome, but I would like to do it for the record.

**The Chair:** The question is, is the chair's ruling sustained? And we'll record the votes.

**Mr. John Williamson:** On a point of clarification, is the text you just read identical to what was read to rule the...?

**The Chair:** No, that one was beyond the scope. This is contrary to the principle of the....

**Mr. John Williamson:** I'm going to be obtuse and ask you to read it again

The Chair: The whole thing or the opinion of the chair part?

Mr. John Williamson: I like to know what I'm voting on, so yes.

**The Chair:** Bill C-20 amends the Constitution Act of 1867. It amends the rules for adjusting the number of members in the House of Commons. This amendment proposes to amend those rules so as to keep the numbers of members at the current level.

The *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, maintaining the current numbers of members of the House of Commons is contrary to the principle of Bill C-20, so it is therefore inadmissible.

Mr. John Williamson: I vote with the chair, yes.

Someday it might.

The Chair: Thank you.

**Mr. Marc Garneau:** I vote no, but may I ask, Mr. Chair, how it is contrary to the principle?

**The Chair:** I guess the simplest answer is that the principle of Bill C-20 is to adjust the membership of the House and this amendment seeks to keep it the same. That would be quite contrary to the principle.

**Mr. Marc Garneau:** Am I to assume that if you keep the number at the same level you are going against the principle, when we achieve the same results as with Bill C-20? If you look at the numbers themselves, I mean, how could this be contrary?

The Chair: It's not debatable. We've just had the vote to overrule it, and the result of that is that it was—

**Mr. Marc Garneau:** But you have not explained to me how it is contrary, with respect, Mr. Chair—

**The Chair:** It's just that it's leaving it where it is now rather than making a change. The principle of the bill is to change it.

**•** (1125)

**Mr. Marc Garneau:** If I may, the Constitution says that the concept of proportional representation is the driving factor behind this, and we have achieved that to the same extent as Bill C-20.

The Chair: I'm not going to enter into debate on the ruling. The ruling is....

[Ruling of the chair sustained [See Minutes of Proceedings]

(Clauses 2 to 7 inclusive agreed to on division)

(On clause 8)

The Chair: We're at NDP-3.

Mr. David Christopherson: Are you looking now for my amendment?

The Chair: NDP-3, amending clause 8.

**Mr. David Christopherson:** But are you going to let me place it and debate it?

The Chair: Yes.

Mr. David Christopherson: Okay. We're making headway.

Thank you, Chair.

I move that Bill C-20 in clause 8 be amended by replacing line 20 on page 6 with the following: "at least 75 days before the day on which the".

That ends the amendment. May I speak?

The Chair: Sure.

**Mr. David Christopherson:** Based on the testimony that we've heard—there was conflicting testimony, granted—we believe there was enough testimony that not only is the government going in the wrong direction by limiting the time, but we think this is an important opportunity to expand the time.

We're talking about giving the public an opportunity to have their feedback. We're very concerned about reducing it, and that's the reason for the amendment.

Mr. Marc Garneau: A point of order, Mr. Chair.

I want to go back to your ruling, and I want to say this because you ruled before any chance was given to either Mr. Christopherson, in his case, or in my case to actually discuss our amendment. You ruled right away, and that is not, in my opinion, within your mandate to do so.

It is within your mandate to rule on a point of order, but to come out and immediately declare your position and for it not to be debatable is not an acceptable position for the chair.

**The Chair:** In each case, Mr. Garneau, I allowed you to move your motion, at which point I made my ruling. So you moved your motion—

Mr. Marc Garneau: And you did not allow any discussion to occur and it was not debatable.

**The Chair:** That's usually how a chair's ruling would go. You'll move the motion and I rule whether the motion is in order or out of order. If it's in order, then discussion will take place, as Mr. Christopherson is doing right now on this clause 8.

If it's out of order, then after you've moved it I immediately share with you the ruling.

Mr. Marc Garneau: You immediately basically shut down the whole thing by your ruling.

The Chair: Well, I'm sorry you feel that way, Mr. Garneau, but I made the chair's ruling on whether the amendment was acceptable to the chair—in this case, it was contrary to principle. So that's when the ruling should be made, after you've moved it.

Mr. Marc Garneau: Which I don't agree with, but we didn't have a chance to debate that.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you— The Chair: I'm sorry, Mr. Lukiwski.

Mr. Christopherson, were you finished? You moved it and-

**Mr. David Christopherson:** I wasn't, but I'm assuming you're now dealing with the point of order that was raised, and I'm fine with that. I'm assuming you will come back to me.

The Chair: Well, then I will come back to you now.

Oh, are you on the point of order? Sorry, go ahead.

Mr. Tom Lukiwski: A point of order.

Marc, with the greatest of respect, because I don't think you're doing this in a manner to try to just unduly delay the procedures, but I've been through a number of clause-by-clause examinations on various bills, as I'm sure many of the members who have been around this place for a long time have, and what the chair has done is procedurally quite correct. That's exactly how these things are handled in committee.

When the clause or amendment is introduced, if the chair makes a ruling that it is outside the scope or it doesn't confine with the principle and it's ruled out of order, that is the time. There is no debate and we move on.

I know you don't like it, but he's dealing with it exactly as the procedures dictate he deals with it.

(1130)

The Chair: David, back to you.

**Mr. David Christopherson:** I think I've said my bit. If anybody else has any comments, I'll respond to them, Chair. Thank you for the opportunity.

**The Chair:** Is there further comment?

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Yes, I would just point out that the timelines contained in the bill are minimums, not maximums, so they can certainly be expanded. They can be moved forward if they wished. That's why we're comfortable with the wording of this clause.

Mr. David Christopherson: Mr. Chair, I appreciate the comment back. Our concern is, though, that without the guarantee that it'll be given—I understand it's even interpreted loosely and we've had testimony to that effect. Nonetheless, when the crunch comes, we all know around this table that what matters is what's in the law.

If someone has been denied natural justice, but the powers that be can point to wording in the laws that say you're out of luck, then you're out of luck.

So with the greatest of respect to my colleagues on the government benches and to witnesses who said there's latitude, we would feel a lot more comfortable—given that this is a protection for the public to have their say on their House—if we could see that protection built into the law rather than being left to the vagaries of various one-off decisions.

**The Chair:** Okay. Is there further discussion on amendment NDP-3? Seeing none, I'll call the question.

(Amendment negatived)

The Chair: We'll go to amendment NDP-4.

Mr. Christopherson.

**Mr. David Christopherson:** Yes, I'm trying to catch up with you, Chair.

I move that Bill C-20 in clause 8 be amended by replacing line 28 on page 6 with the following:

secretary of the commission within 67 days after

They are the same arguments, Chair.

The Chair: Discussion?

Seeing none, we'll vote on amendment NDP-4.

(Amendment negatived)

(Clauses 8 to 23 inclusive agreed to on division)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: It's on division.

We're in the preamble, and we have amendment NDP-1. **Mr. David Christopherson:** Do I have the floor, Chair?

The Chair: You do. Go ahead.

**Mr. David Christopherson:** I'm going to see how far I'm going to get here while you're shuffling papers.

I move that Bill C-20 in the preamble be amended (a) by replacing in the English version, line 10 on page 2 with the following:

Whereas the Constitution Act, 1985

and (b) by adding after line 17 on page 2 the following:

Whereas the House of Commons, on November 27, 2006, adopted a motion recognizing that "the Québécois form a nation within a united Canada";

And whereas the proportion of members from the Province of Quebec in the House of Commons must therefore remain unchanged from the representation that it had when the motion was adopted on November 27, 2006;

**The Chair:** Mr. Christopherson, the amendment seeks to make a substantive modification by adding new elements to the preamble. The *House of Commons Procedure and Practice*, second edition, on page 770 states:

In the case of a bill that has been referred to a committee *after* second reading, a substantive amendment to the preamble is admissible only if it is rendered necessary by amendments made to the bill. In addition, an amendment to the preamble is in order when its purpose is to clarify it or to ensure the uniformity of the English and French versions.

In the opinion of the chair, the proposed amendment is substantive and therefore inadmissible.

**●** (1135)

Mr. David Christopherson: I respectfully challenge the chair.

The Chair: We'd better cover that off first.

(Ruling of the chair sustained [See Minutes of Proceedings])

**The Chair:** Shall the preamble carry?

Some hon. members: Agreed.

The Chair: It's on division.

Shall the title carry?

Some hon. members: Agreed.

The Chair: It's on division.

Shall the bill carry?

Some hon. members: Agreed.

The Chair: It's on division.

Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: It's on division.

We don't need to order a reprint of the bill because we haven't

amended it.

That is our work on Bill C-20.

Some hon. members: Hear, hear!

**The Chair:** Is there anything else for the good of this committee

today?

Then the meeting is adjourned.



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