

Government Relations and Ethics Bulletin

January 2010

Fasken Martineau DuMoulin LLP

The Prime Minister's Prorogation Play

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Prime Minister Stephen Harper's decision to prorogue Parliament for the second time in two years in the dead of the holiday season has been described by critics as a "an assault on democracy" and proponents as a "brilliant political manoeuvre".

The decision has heightened speculation of other imminent 'political manoeuvres' such as a Cabinet Shuffle, new Senate appointments and a Spring election call. Whatever the range of potential implications, the decision to prorogue parliament has some very real and immediate implications for the business of government and any Canadian business impacted by government decision-making. This bulletin provides a brief overview of prorogation and its implications in the current Canadian political context.

Background

Canadians most recently became familiar with the concept of prorogation in late 2008. Amidst a hurriedly organized alliance between the three opposition parties and a severe economic downturn, Prime Minister Harper avoided an impending confidence vote in his government by requesting that the Governor General prorogue Parliament. The Governor General accepted Mr.

Harper's request and ended the 13 day old Parliamentary session, less than two months after the previous general election. Now, a year later, Prime Minister Harper has, again, brought a quick end to a Parliamentary session, but under very different political circumstances.

Prorogation in itself is not exceptional. One of the most basic rights of members of the House is to express confidence or non-confidence in a government. Each parliamentary session (except the last session prior to an election) is normally prorogued. But 2008 was the first time since the 1800's, that prorogation would be used by a sitting Canadian Prime Minister to avoid the fall of his government. In 1873, the Governor General, Lord Dufferin, was faced with a request from Prime Minister John A. Macdonald to prorogue parliament. Macdonald had been embroiled in the Pacific Scandal which charged Macdonald and other key Conservative ministers of corruption. A commission of inquiry was summoned to investigate and Macdonald feared defeat by a vote of non-confidence.

What is Prorogation?

Prorogation of Parliament is a royal prerogative of the Crown, exercised by the Governor General on the advice of the

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Prime Minister and accomplished by way of a special ceremony in the Senate Chamber or by issuing a proclamation published in the Canada Gazette. Both the Senate and the House of Commons stand prorogued (discontinued) until the opening of the next session.

Prorogation of a session usually brings to an end all proceedings before Parliament. Government bills that have not received Royal Assent prior to prorogation 'die' on the *Order Paper* and must be reintroduced as new bills in the next session. Exceptionally, and as discussed in further detail below, bills can be reinstated by agreement in the House.

Unlike dissolution of Parliament in advance of an election, during a period of prorogation, the Speaker, the Prime Minister, Ministers and Parliamentary Secretaries remain in office and all Members of the House retain their full rights and privileges. Members, however, are released from their parliamentary duties until Parliament is next summoned.

As committees are extensions of the House with their powers limited entirely to the authority delegated to them by the House, committee activities also cease with no committees sitting post-prorogation. House Committees automatically lose their reference, mandate, powers and members upon prorogation (although in the case of standing committees and joint standing committees, their existence are automatically provided for under Standing Orders). Consequently, House committees will need to be re-constituted, a new Chair appointed, etc. (even if the committee makeup stays the same, i.e. same members, same Chair re-appointed).

What does Prorogation not Affect?

Prorogation, however, does not affect Orders or Addresses of the House for the tabling government

reports required to be tabled by statute. Requests for responses to committee reports or petitions are still valid following a prorogation. These continue in force from one session to another, but are ended by dissolution.

Prorogation also does not impact Private Members' Business. Changes to Standing Orders made permanent in 2005, means that prorogation now has little practical effect on Private Members' Business. Private Members' bills and motions originating in the House, including motions for papers which have been transferred for debate, need not be reintroduced in a new session as they automatically are deemed to have passed all stages completed in the previous session and retain the same place on the *Order Paper*.

Reinstating Government Bills Post-Prorogation

Although the general rule is that government bills die on the *Order Paper* and must be re-introduced at the start of a new session, bills have been reinstated by motion at the start of a new session at the same stage they had reached at the end of the previous session. Committee work has similarly been revived. This has been accomplished in a variety of ways.

- The House has given unanimous consent to a motion to reinstate a bill in a new session at the same stage it had reached before prorogation.¹
- The House has adopted amendments to its Standing Orders to carry over legislation to the next session, following a prorogation.²

¹ See, for example, *Journals*, October 21, 1970, p. 46; May 9, 1972, p. 281; March 8, 1974, pp. 25-6; October 3, 1986, pp. 47-8. In 1986, the special order included a provision to bring forward from committee any evidence adduced and documents received in relation to the revived bills.

- In the Second Session of the Thirty-Fifth Parliament (1996-97), the first item of government business (laid out in a special *Order Paper and Notice Paper*) was a motion “to facilitate the conduct of the business of the House”, which included a mechanism for reinstatement of bills — private Members’ as well as government bills.³

Implications for Specific Parliamentary Business

One of the speculated reasons for Prime Minister Harper’s decision to prorogue, is to ensure that Senate committees can be reconstituted in the next Parliamentary session to reflect a plurality of Conservative Senators. Five new Senate appointments may be made over the next couple of months which would give the Conservatives a plurality of Senate votes over the Liberals. While government bills will all face delays, whether reinstated or tabled anew, this may be acceptable for Prime Minister Harper if he can avoid government bills from being amended by Liberal Senators and delaying the progress of government bills.

Below is a brief overview of selected Private Member and government bills which illustrates the impact prorogation will have on both government and private members’ business.

Government Bills

Bill C-27

On April 24, 2009, the Government introduced anti-spam legislation entitled the *Electronic Commerce Protection Act* (“Bill C-27”). Bill C-27 was one of the most advanced government bills, having been slated for Senate Committee review upon return of Parliament in January.

While Bill C-27’s objective was deemed desirable and the introduction of anti-spam legislation in Canada long over-due- opposition MPs, representatives of the financial services industry, the Canadian Chamber of Commerce and others expressed concerns that Bill C-27 over-reaches and would create unnecessary and harmful impediments to electronic commerce.

After second reading in the House, Bill C-27 was referred to the Standing Committee on Industry, Science and Technology for review. A number of amendments were made to Bill C-27; however opposition members, in particular Liberal members of the Committee, continued to express concerns with the scope of Bill C-27, as amended. Despite these reservations, Bill C-27 passed third reading at the House with Liberal MP Siobhan Coady suggesting that Liberals would seek further amendments at the Senate level. The capacity of Liberal Senators to pass amendments to anti-spam legislation, and return the bill to the House for consideration, will be hampered post-prorogation if the Conservatives obtain a plurality of votes in the Senate and on Senate Committees.

Bill C-15

Bill C-15, which proposed changes to the *Controlled Drugs and Substances Act*, was introduced to address a key element of Prime Minister Harper’s ‘tough-on-crime’ legislative agenda. Bill C-15 included mandatory minimum sentences for drug

² *Journals*, July 22, 1977, p. 1432; March 22, 1982, pp. 4626-8.

³ *Journals*, March 1, 1996, pp. 23-5; March 4, 1996, pp. 33-5, 39-41. This occurred before 2003 when the rules regarding Private Members’ bills were first introduced.

offenders found guilty of trafficking, and who had been convicted of another drug offence within the past 10 years. Bill C-15 was passed by the House with the support of Liberal MPs; however, when Bill C-15 hit the Senate, Liberal Senators voted to remove this mandatory minimum sentence requirement. All four independent senators voted with the Liberals to change the legislation while the Conservatives remained solidly against the amendments.

As amended by the Senate, Bill C-15 would still allow judges to impose harsh sentences on drug traffickers when deemed to be warranted; however, mandatory terms would be applicable only if the offender had spent a year or more behind bars for their previous conviction.

Now that Parliament has been prorogued, anti-crime legislation such as Bill C-15 can be reintroduced by the government. By the time it reaches the Senate, Conservatives may have the plurality of votes to avoid amendments to the legislation.

Bill C-6: Consumer Safety Bill

Bill C-6 which proposes the *Canada Consumer Product Safety Act* was introduced by the government in January 2009 and passed to the Senate in June. Bill C-6 would have provided mandatory recall powers and required companies to alert Health Canada of any serious incidents involving their products. Bill C-6 had obtained unanimous consent in the House. At the Senate stage, however, 45 Liberal Senators voted for a series of amendments, sending Bill C-6 back to the House. According to consumer groups such as the Consumers Council and Consumers Association of Canada, the Liberal amendments, which sought to limit the authority of government inspectors, essentially gut the legislation.

As with Bill C-15, now that Parliament has been prorogued, the Government can re-introduce Bill C-

6 in its original form. By the time Bill C-6 reaches the Senate, Conservatives may have the plurality of votes to resist Liberal amendments.

Private Member Bills

Bill C-300

On February 9, 2009, John McKay introduced Bill C-300 ("Bill C-300"), which proposes the *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*. On Wednesday April 22, 2009, the Bill passed second reading in the House and was referred to the Standing Committee on Foreign Affairs and International Development ("CFAID").

CFAID first met to hear testimony with respect to Bill C-300 on Monday May 25, 2009 and last met to discuss the Bill on December 3, 2009, before adjourning for the holiday recess.

Before Parliament was prorogued, CFAID was to meet on January 26th for a clause by clause analysis of the Bill and was to report back to the House by January 28th, 2010.

Now that Parliament has been prorogued, Bill C-300 is unlikely to make it out of CFAID and to the House for third reading until the next Parliamentary session in the fall of 2010. As a Private Members bill, Bill C-300 will survive prorogation; however prorogation will significantly delay its progress.

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